UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

07 CV 6602 (PKL)

CANTONE & CO., INC.,

Plaintiff,

- against -

SEAFRIGO a/k/a SEAFRIGO MARSEILLE,

Defendant.

DECLARATION OF STEPHEN H. VENGROW

Stephen H. Vengrow declares that the following statement is true under the penalties of perjury::

- I am a member of the I am a member of the law firm of Cichanowicz, Callan, Keane, Vengrow & Textor, LLP, the law firm representing SeaFrigo Marseille in the captioned litigation.
- 2. Attached are the following Exhibits which are true and complete copies:

Exhibit A Original SeaFrigo House Bill of Lading "HB/L no. E35039700000 dated September 22, 2006 and whose backside Clause 20 ("Jurisdiction") states:

Disputes arising under this Bill of Lading shall be determined by the Tribunal of Commerce at Le Havre under the law of France and no other Court shall have jurisdiction with regards to any such action.

Exhibit B 46 C.F.R. §520.4(5) of Part 20-Carrier Automated Tariffs

Filing Rules issued by the Federal Maritime Commission.

Exhibit C The Hatsu Marine ("Hatsu") backside bill of lading terms

and conditions downloaded from the Hatsu website and which shows Clause 29 ("Law and Jurisdiction"); to wit:

- (1) Governing Law-Save where the terms and conditions of this bill of lading provide for another law to apply, this bill of lading shall be governed by, and its terms and conditions shall be construed according to, English law.
- (2) Jurisdiction-All claims and disputes under this Bill shall be determined by the High Court of Justice, England to the exclusion of the jurisdiction of the courts of any other country provided always that the Carrier may in its absolute and sole discretion invoke or voluntarily submit to the jurisdiction of the courts of any other country which, but for the terms of this Bill of Lading, could properly assume jurisdiction to hear and determine such claims or disputes, but this shall not constitute a waiver of the terms of this provision for any other claims or disputes.
- (3) Notwithstanding, the provisions of Clause 29(1) and (2) above, if the carriage includes carriage to, from or through a port in the United States of America, the Merchant may refer any claim or dispute to the United States District Court for the Southern District of New York in who shall determine the same accordance with the laws of the United States of America.

Exhibit D Sample Hatsu bill of lading (with backside) issued September 14, 2006 with backside terms and conditions which shows Clause 29 ("Law and Jurisdiction") in the exact same wording as stated in Exhibit C.

Exhibit E Hatsu boiler plate B/L form with the backside terms and conditions reflecting identical language including Clause 29 ("Law and Jurisdiction") language as shown in Exhibit C and D.

Exhibit F Backside bill of lading terms and conditions represented

by Cantone's lawyer to be the backside of the SeaFrigo House Bill of Lading E35039700000.

Exhibit G Plaintiff's complaint.

Exhibit H Defendant's answer.

Exhibit I The Docket Sheet

Exhibit J Plaintiff's process of maritime attachment and

garnishment

Exhibit K Proposed French bank guarantee

Exhibit L Plaintiff's claim statement

Exhibit M Plaintiff's affidavit in support of attachment

3. I obtained **Exhibits D** and **E** from the Manager of the export department of Evergreen America Corporation located at One Evertrust Plaza, Jersey City, New Jersey. Specifically I ask for and received a sample Hatsu B/L with backside which was issued in September 2006 which is the same month that **Exhibit A** was prepared. [As shown in **Exhibit D**, Evergreen America acted as the agent of Hatsu. Today, Hatsu is part of the Evergreen Organization.] It was also explained to me that **Exhibit E** always shows the front side as blank until a confirmation booking is made by Hatsu or its agent at which time there is computer generated a front side Hatsu B/L form with the relevant shipping information inserted into each of the front side boxes with the backside terms and conditions remaining as the backside of the computer generated front side (as shown by **Exhibit D**).

- 4. I would point out that in the "Declared Value" sentence, at the lower portion of the box entitled "Description of Packages and Goods" on the front side of the SeaFrigo HB/L no. E35039700000, there is referenced Clause 7.1 which is the SeaFrigo ad valorem language. Clause 7.1 ("Compensation for Loss and Damage") states:
 - 7.1. Unless otherwise mandated by compulsorily applicable law Carrier's liability for compensation for loss or damage to goods shall in no case exceed the amount of US\$500 per package or per customary freight unit, unless the Merchant, with the consent of Carrier, has declared by writing a higher value for the goods in the space provided on the front of this Bill of Lading and paid extra freight per Carrier's tariff, in which case such higher value shall be the limit of Carrier's liability. Where a container is stuffed by shipper or on its behalf, and the container is sealed when received by Carrier for shipment, the Carrier's liability will be limited to US\$500 with respect to the contents of each such container, except when the Shipper declares by writing the value on the face hereof and pays additional charges on such declared value. The freight charged on sealed containers when no higher valuation is declared by the Shipper is based on a value of US\$500 per container. However, Carrier shall not, in any case, be liable for an amount greater than the actual loss to the person entitles to make the claim (underlining added).
- 5. Clause 7.1 ("Amount of Compensation and Limitation of Liability") of Exhibit F (the purported backside terms and conditions of the SeaFrigo HB/L) is not an ad valorem clause. Rather, this Clause 7.1 is that of the Hatsu B/L (see Exhibit C, D and **E**); to wit:
 - (1) All claims for which the Carrier may be liable shall be adjusted and settled on the basis of the net invoice value of the Goods plus freight and insurance. Notwithstanding the foregoing it is agreed that that in no event shall this clause operate to increase the extent of the Carrier's liability beyond the applicable market value at the port of discharge or place of delivery, if that be less than the net invoice value plus freight and insurance. In no event shall the Carrier be liable for any loss of profit or any consequential loss.

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Dated: New York, NY, May 22, 2007

Stephen H. Vengrow

VENGROW EXHIBIT A

BILL OF LADING: 10 ORIGINAL



SHIPPER (Principal or	Seller-license a	nd address)			BILL OF LAI	DING NUMBER		E35039700 0 0	00	
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CONSIGNEE (Non-Ne CANTONE & CO INC	gociable unless	consigned t	FRAI o order)	,	POINT AND	COUNTRY OF ORI	GIN			
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NEW-YORK 10022			U.S.	A .	}					
NOTIFY PARTY / INT	ERMEDIATE C	ONSIGNEE			RELEASE IN	ISTRUCTIONS / Pre	sentation OI	FFICE		
SAME AS CONSIGNEE					PLEASE COI SEAFRIGO II Phone : 201.7	NC - Maite CHAVARRI				
PRE-CARRIAGE BY		PLACE OF RE	GEIPT		-					
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TERMS AND CONDITIONS

Case 1:07-cv-06602-PKL

O CLAUSE PARAMOUNT:

CLAUSE PARAMOUNT:
This Bill of Lading shall have effect sübject to the provisions of the Hague Rules contained in the International Convention for the unification of certain rules relating to Bills of Lading dated Brussells the 25th August 1924 as amended by the protocole at Brussels on 28rd February 1988 and 21st December 1979. In the event that this Bill of Lading covers shipment to or from the United States, then the Bill Of Lading shall have effect subject to the provision of the Carriage of Goods by Sea Act of the United States 46 U.S.C. sections 1300-1315 (hereafter, 'COGSA). The provisions stated in Hague rules or COGSA (except as may be otherwise specifically provided herein) shall govern before the goods are loaded on and after they are discharged from the ship and throughout the entire time the goods are in the custody of the carrier.

DEFINITIONS :

2.1 "Ship" means the vessel named in this Bill of Lading, or any conveyance owned, chartered, or operated by Carrier or used by Carrier for the performance of this contract

the performance of this contract.

2.2 "Carier" means Entrephis et Transports Barbé Seafrigo Le Hawe, France on whose behalf this Bill of Lading has been signed.

2.3 "Merchant" includes the Shipper, the Receiver, the Consignor, the Consignee, the Holder of this Bill of Lading and any person having a present or future interest in the Goods or any person acting on behalf of eny of the above-mentioned persons.

2.4 "Package" is the largest individual unit of partially or completely

2.4 "Fackage" is the largest individual unit of partially or completely covered or contained cargo made up by or for the Shipper which is delivered and entrusted to Carrier, Including palletized units and each container stuffed and seeled by the Shipper or on its behalf, atthough the Shipper may have turnished a description of the contents of such sealed container on this Sill of Lading.
2.5 "Container" includes any container, trailer, transportable tank, lift van, flat, pallet, or any similar article of transport used to consolidate opport.

SUBCONTRACTING:

3.1 Carrier shall be entitled to subcontract on any terms the whole or any part of the handling, storage, or carriage of the goods and all duties undertaken by Carrier in relation to the goods.

3.2 Every servant or agent or subcontractor of Cerrier shall be entitled.

to the same rights, exemptions from liability, defenses and immunities to which Carrier is entitled. For these purposes, Carrier shall be deemed to be acting as agent or trustee for such servants or agents, who shall be deemed to be parties to the contract evidenced in this Bill of Lading. A ROUTE OF TRANSPORT:

Carrier is entitled to perform the transport in any reasonable manner

and by any reasonable means, methods and routes.

4.2 The Ship shall have the liberty to, at any filme, adjust navigational instruments, make trial trips, dry dock, go to repair yards, shift barths, take in fuel or stores, embark or disembark any persons, carry contraband and hazardous goods, sail with or without pilots and save or attempt to save life or property. Delays resulting from such activities shall not be deemed a deviation.

A HINDRANCES AFFECTING PERFORMANCE :

5.1 Carrier shall use reasonable endeavors to complete transport and to deliver the goods at the place designated for delivery.

deliver the goods at the place designated or delivery.

S.2 If at any time the performance of this contract as evidenced by this Bill of Lading in the opinion of Carrier is or will be affected by any hindrance, risk, delay, difficulty or disedventage of any kind Including strike and if by virtue of the above Carrier has no duty to complete the performance. mance of the contract, Carrier, whether or not the transport is com-

menced may elect to:

a) treat the performance of this contract as terminated and place the goods at Merchant's disposal at any place Carrier shall deem safe and convenient, or

(c) deliver the goods at the place of delivery.

In any event, Carrier shall be entitled to full freight for any goods received for transportation and additional compensation for extra costs resulting from the circumstances referred to above.

BASIC LIABILITY:

6.1 Cerrier shall be liable for loss of or damage to the goods occurring between the time when it takes goods into its charge and the time of

6.2 If it is established that the loss of or damage to the goods occurred during sea carriage, liability shell be governed either by the Hague rules or by COGSA (see section 1).

6.3 If it cannot be dotermined when the loss of or damage to the goods

occurred, it shall be presumed that such loss or damage occurred while

the goods were in the custody of Carrier.

6.4 Carrier does not undertake that the goods shall be delivered at any particular time and shall not be liable for any direct or indirect losses caused by any delay.

caused by any death of the liable for any loss or damage arising from : (a) an act or omission of Marchant or person other than Carrier acting on behalf of Merchant from whom Carrier took the goods in charge, (b) compliance with the instructions of any person authorized to give

(c) handling, loading, stowage or unloading of the goods by or on behalf of Merchant.

(d) inherent vice of the goods.

(a) inherent vice in the goods, (e) lack of insulficiency of or defective condition of packing in the case of goods, which by their nature, are liable to wastage or damage when not packed or when not properly packed.

indipeased of which indipelpersy pervisor, (i) insufficiency or inadequacy of marks or numbers on the goods, coverings or unit loads, (g) fire, unless caused by actual fault or privity of Carrier, (ii) any cause or event which Carrier could not avoid and the consequen-

the ground cause of event which cause could not avoid and not be consequen-ces of which he could not prevent by the exercise of due diligence. 6.6 With respect to the transportation performed by Inland Carriers to the port of loading or from the port of discharge, the responsibility of Cerrier shalf be to procure transportation by such carriers (one or more) and such transportation shalf be subject to the Inland Cerrior's contracts of cerriage, tariffs and eny law compulsorily applicable.

COMPENSATION FOR LOSS AND DAMAGE:

COMPENSATION FOR LOSS AND DAMAGE:
7.1 Unless otherwise mendated by compulsorily applicable law, Carrier's lieblity for compensation for loss of or damage to goods shall in no case exceed the amount of US \$500 per packege or per customary freight unil, unless the Merchent, with the consent of Carrier, has declared by writing a higher value shall be the first of Carrier's tarift, in which case such higher value shall be the limit of Carrier's lieblity. Where a container is stuffed by shipper or on its behalf, and the container is seeled when received by Carrier for shipment, the Carrier's liability will be limited to US \$500 with respect to the contents of each such container, except when the Shipper declares by writing the value on the face hereof and pays additionnal charges on such declared value. The freight charged on sealed containers when no higher valuation is declared by the Shipper is based on a value of US \$500 per container.

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However, Carrier shall not, in any case, be liable for an amount greater than the actual loss to the person entitled to make this claim, 7.2 In any case where Carrier's liability for compensation may exceed the amounts set forth in clause 7.1 above, compensation shall be calculated by reference to the value of the goods, according to their current market price, at the time and place they are delivered, or should have been claivered, in accordance with this contract, 7.3 if the value of the goods is less than US \$500 per package or per customary freight unit, their value for compensation purposes shall be deemed to be the invoice value, plus freight and insurance, if paid.

3 DESCRIPTION OF GOODS.

Werchant warrants to Carrier that all particulars of the coods, including.

erchant warrants to Carrier that all particulars of the goods, including, ntercrient warrants to Carner that all particulars of the goods, including, without limitation, the marks, number, quantify and weight, furnished by Merchant are correct and Merchant shell indemnify Carrier against all

losses arising from any inaccuracy.

OCARRIER'S CONTAINERS:

Solution 3.

3.1 If goods are not received by Carrier already in containers, Carrier may pack them in any type container.

9.2 Merchant shall be liable to Carrier for damage to Carrier's containers.

or equipment if such damage occurs while such equipment is in control

of Merchant or his agents.

9.3 Merchant indemnifies Carrier for any damage or injury to persons or property caused by Carrier's containers during handling by or when in possession or control of Merchant.

9.4 Marchant undertakes to return such containers to Carrier within the time 9.4 Wakaram of identified to recommend of comments to carrier which the time provided for in Cerrier's applicable tariff, otherwise, Merchant shall pay Cerrier for the derrumage or detention charges applicable to the containers.

OCONTAINER PACKED BY MERCHANT:

If Carrier receives the goods already packed into containers:

1. This Bill of Lading is prime facie evidence of the receipt of the particular number of containers set forth, and that number only. Carrier accepts no responsibility with respect to the order and condition of the contents of the containers:

contents of the containers, 2. Merchant warrants that the stowage and seals of the containers are sefe and proper and suitable for handling and carriage; 3. Delivery shall be deemed as full and complete performance when the

containers are delivered by Carrier with the seals intact; and 4. Carrier has the right to open and inspect the containers at any time without notice to Merchant, and expenses resulting from same shall be rne by Merchant.

DANGEROUS GOODS:

11.1 Merchant may not tender goods of a dangerous nature without written application to Carrier and Carrier's acceptance of the same. In the application, Merchant must identify the nature of the goods with reasonable specificity as well as the names and addresses of the shippers.

11.2 Merchant shall distinct and nermanently mark the nature of the

11.2 Merchant shall distincty and permanently mark the nature of the goods on the outside of the package and container and shall submit to Cerrier or to the appropriate authorities all necessary documents required by law or by Carrier for the transportation of such goods.
11.3 If the goods subsequently, in the judgement of Carrier, become a denger to Carrier, the Ship, or other cargo, Carrier may dispose of the goods without compensation to Merchant and Merchant shall indemnify Carrier for any loss or expenses arising from such action.
PERISHABLE GOODS:

@ PERISHABLE GOODS: 12.1 Goods of a perishable nature shall be carried in ordinary Containers without special protection, services or other measures unless there is noted on the reverse side of this Bill of Lading that the Goods will be carried in a refrigerated, heated, electrically ventilated or otherwise specially equipped Container or are to receive special attenti-on in any way. The Merchant undertakes not to tender for transportatior in any way. The west care in uncertaines not to learner or unare spontain-or any Goods which require refrigeration without given written notice of their nature and the required temperature satting of the thermostatic controls before receipt of the Goods by the Carrier in case of refrigera-ted Container(s) packed by or on behalf of the Merchant. The Merchant ted Container(s) packed by or on behalf of the Merchant. The Merchant undertakes that the Goods have been properly stowed in the Container and that the thermostatic controls have been properly stowed in the Container and that the thermostatic controls have been adequately set by him before receipt of the Goods by the Carrier and, if necessary, that the Goods have been pre-chilled before the loading into the Container. The Merchant's attention is drawn to the fact that refrigerated Containers are not designed to freeze down Goods which has not been presented for stuffing at or below its designated carrying temperature and the Carrier shall not be responsible for the consequences of cargo presented at a higher temperature than that required for the transportation. If the above requirements are not complied with the carrier shall not be liable for any loss of or damage to the Goods howsoever arising.

12.2 The term "apparent good order and condition" when used in this Bill of Lading with reference to Goods which require refrigeration does not mean that the Goods, when received were verified by the Carrier as being at the designated carrying temperature.

12.3 The Carrier shall in no event be held liable for damage to Goods

(R) DECK CARGO

13.1 Carrier has the right to carry the goods in any container under deck

or on deck.

13.2 Carrier is not required to note "on deck storage" on the face of this

13.2 Except as otherwise provided by any law applicable to this con-

tract, if this Bill of Lading states that the cargo is slowed on deck, then Carrier shall not be liable for any non-delivery, misdelivery, delay or loss to goods carried on deck, whether or not caused by Carrier's negligen-ge or the ship's unseaworthiness.

CE or the ship's uns

14.1 Single packages with a weight exceeding 2.240 pounds gross not presented to Carrier in enclosed containers must be declared in writing by Merchart before receipt of the packages by Carrier. The weight of such packages must be clearly and durebly marked on the outside of the

such packages must be clearly and outsuly marked on the business of the package in letters and figures not less than two inchas high.

14.2 If Merchant falls to comply with the above provisions, Carrier shall not be liable for any loss of or damage to the goods, and Merchant shall be liable for any loss of or damage to persons or property resulting from such failure and Merchant shall indemnify Carrier against any loss or liauffered or incurred by Carrier as a result of such failure

15.1 Carrier shall have the right to deliver the goods at any time at any place designated by Carrier within the commercial or geographic limits of the port of discharge or place of delivery shown in this Bill of Lading. 15.2 Carrier's responsibility shall cesse when delivery has been made to Merchant, any person authorized by Merchant to receive the goods, or in any manner or to any other person in accordance with the custom

and usage of the port of discherge.

15.3 If goods should remain in Carrier's custody after discherge from the ship and possession is not taken by Merchart, after notice, within the time allowed in Carrier's applicable tariff, the goods may be considered to have been delivered to Merchant, and, at Carrier's ontion, may be stored at Merchant's expense.

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16. NOTICE OF CLAIM:

16.1 Written notice of claims for loss of or damage to goods occurring or presumed to have occurred written in the custody of Carrier must be given to Carrier at the project of ischarge before or at the line of renoval of the goods by one entitled to delivery. If such notice is not provided, removal shall be prima facile evidence of delivery for Carrier. If such is contained a superior of the provided of the contained of the provided of the contained of th

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three [3] days of the delivery.

FREIGHT AND CHARGES:

17.1 Freight may be calculated on the basis of the particulars of the goods furnished by Merchant. Carrier and Merchant agree that it may be disculated on the basis of the particulars of the goods furnished by Merchant. Carrier and Merchant agree that it may be difficult or impossible to assess damages if freight is incorrectly declared. Therefore, in case of incorrect declaration of the goods, Merchant shall pay a sum equal to three times the difference between the correct freight and the freight charged as liquidated damages, notwithstanding any other sum having basen stated harein as freight payabla. Quotations as to fees, rates of duty, freight charges, insurance premiums or ofter charges given by Carrier to Merchant are for informational purposes only and assubject to change without notice and shall not under any dicrumstances be binding upon Carrier unless the Carrier in writing specifically undertakes the handling of transportation of the shipment at a specific rate.

17.2 Freight shall be deemed earned upon booking of goods by Carrier, whether the freight be intended to be prepaid or collected at destination. Payment shall be in full and in cash, in the currency rarried in this Bill of Lading, or another currency at Carrier's option, interest at 12% shall run from the date when freight and charges are due and not returnable in any event. If the services of a freight forwarder are used for this transportation, those services shall be deemed to be performed as agent of Merchant and payment of freight to the freight lowarder is not payment to Carrier. Full freight shall be paid on damaged or unaound goods. In any referral for collection or action against the Merchant for monies due to Carrier, upon recovery by the Carrier, the Merchant shall be taltoneys fees.

17.3 Merchant shall be liable for all dues, duties, fines, taxes and charges, including consular fees, levied on the goods. Merchant shall be liable for return freight and charges on the goods if they are refused export or import by any government. 17.4 All persons encompassed within the definition of "Merchant" as pro-

17.4 All persons encompassed within the definition of "Merchant" as provided in section 2 of this Bit of Lading shall be jointly and severally fields to Carrier for the payment of all freight and charges, including advances.
17.5 All persons encompassed within the definition of "Merchant" as provided in section 2 of this Bitl of Lading shall be jointly and severally indemnify the Carrier for all claims, lines, penalties, demages, costs and

till Lien:
The Carrier shall have a general lien on any and all property (and documents relating thereto) of the Merchant, in its possession, custody or control or an route, for all claims for charges, expenses or advances incurred by the Carrier in connection with any shipments or operations of the Merchant and if such claim remains unsatisfied for ten (10) days of the Merchant and if such claim remains unsatisfied for ten (10) days after demand for its payment is maid, the Carrier may sell at public auction or private sele or otherwise dispose of the goods, upon ten (10) days written notice, registered mail (R.R.R.) to the Merchant, the goods, wares and/or merchandise or so much necessary to satisty such lier, and apply the net proceeds of such sale to the payment of the amount due the Carrier. Any surplus from such sale shall be transmitted to the Merchant, and the Merchant shall be liable for any deficiency in the sale. If the goods are not claimed during a reasonable time in the Carrier opinion, the Carrier will make at his discretion and subject to his lien and without responsability auction, sale, abandon or otherwise dispose of the goods at the risk and expenses of the merchant.

TIME BAR:

TIME BAR:

Carrier shall be discharged from all liability for loss of or damage to goods unless suit is brought within nine (9) months after delivery of the goods or the date when the goods should have been delivered. The time bar for overcharge daims shall be that set forth in Carrier's applicable tariff or thirty six (35) months, whichever is shorter and of legal effect under the laws of the country having jurisdiction over this contract.

JURISDICTION:

Disputes arising under this Bill of Lading shall be determined by the Tribunal of Commerce at Le Havre under the laws of France, and no other court shall have juridiction with regards to any such action.

GENERAL AVERAGE:

21.1 General Average shall be adjusted at New York, or any other port at 21.1 General Average shall be edusated at New York, or any other port at Carrier's option, according to the York-Antwerp Pulse of 1974. The General Average statement shall be prepared by adjusters appointed by Carrier.
21.2 In the event of accident, damage, danger or disaster after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for the consequence of which Carrier is not consequence of which Carrier is not consequenced.

whether due to negligence or not, for the consequence of which Carrier is not responsible by statute, contract or otherwise, Merchant shall contribute with Carrier in General average to the payment of any sacrifice, loss or expense of a General Average nature that may be made or incurred, and shall pay salvage or special charges in respect of the goods. If a salving vessel is owned or operated by Carrier, Salvage shall be paid for as fully as if the salving vessel or vessels belonged to strangers.

BOTH-TO-BLAME COLLISION CLAUSE:

If the ship comes into collision with another vessel as a result of negligence of the other vessel and any negligence or fault on the part of Carrier or its servants or subcontractors, Merchant shall idennify Carrier against all loss or liability to the other or non-carrying vessel or have owners, insofar as such ioss or liability represents loss of, or damage to, or any claim what so ever of Merchant paid or payable by the other or non-carrying vessel or her owners to Merchant and set-off, recouperd non-carrying vessel or her owners to Merchant and set-off, recouped or recovered by the other or non-carrying vessel or her owners as part of their claim against the carrying ship or her owner. This provision shall apply as well where the owners, operators or those in charge of any ship or objects other then, or in addition to, the colliding ships or objects are at fault with respect to a collision or contact.

23.1 The goods carried under this Bill of Lading are also subject to all the terms and conditions of teriffely on file with the Federal Maritime Commission, the Interstate Commerce Commission or any other regulatory agency which governs a particular profition of the carriage and the

letory agency which governs a particular portion of the carriage and the terms are incorporated herein as part of the terms and conditions of this Bill of Lading.

23.2 Copies of Carrier's tariffs may be obtained from carrier or its agents

upon request or from the governmental body with whom the tariff has

SEVERABILITY:

The terms of this Bill of Lading shall be severable, and, it any part or term hereof shall be held invalid, such holding shall not affect the validity of enforceability of any other part or term hereof.

VARIATION OF THE CONTRACT;

No servant or agent of the Carrier shall have power to waive or vary any of the terms hereof unless such variation is in writing and is specifically authorized or ratified in writing by the Carrier.

VENGROW EXHIBIT B

46 CFR Ch. IV (10-1-03 Edition)

rates may be published in individual tariffs of conference members.

(c) Agents, Common carriers or conferences may use agents to meet their publication requirements under (d) Notification. Each common carrier and conference shall notify BTA, prior to the commencement of common carrier service pursuant to a published tariff, of its organization name, organization number, home office address, name and telephone number of firm's representative, the location of its tariffs, and the publisher, if any, used to maintain its tariffs, by electronically submitting Form FMC-1 via the Com-The Commission will provide a unique mission's website at www.fmc.gov. Any changes to the above information shall organization number to new entities operating as common carriers or conbe immediately transmitted to BTA.

www.fmc.gov, a list of the locations of Commission will update this list on a ferences in the U.S. foreign commerce. (e) Location of tariffs. The Commisall carrier and conference tariffs. The will publish on its website, periodic basis. sion

164 FR 11225, Mar. 8, 1999, as amended at 67 FR 39860, June 11, 2002]

§520.4 Tariff contents.

(a) General. Tariffs published pursuant to this part shall:

(1) State the places between which cargo will be carried;

(2) List each classification of cargo in

(3) State the level of ocean transportation intermediary, as defined by section 3(17)(A) of the Act, compensation. if any, to be paid by a carrier or conference;

ference and any rules or regulations termine any part of the aggregate of (4) State separately each terminal or other_charge, privilege, or facility under the control of the carrier or conthat in any way change, affect, or dethe rates or charges;

(5) Include sample copies of any bill of lading, contract of affreightment or other document evidencing the transportation agreement;

(6) Include copies of any loyalty contract, omitting the shipper's name;

Contain an organization records tariff record, and tariff rules; and

(8) For commodity tariffs, also consi tain commodity descriptions and tariff

(b) Organization record. Common cartifiers' and conferences' organization records shall include:

(1) Organization name:

(2) Organization number assigned by the Commission;

(3) Agreement number, where applicable;

Organization type (e.g., ocean (CONF), non-vessel-operating common conference common carrier (VOCC), carrier (NVOCC) or agent); 4

(5) Home office address and telephone number of firm's representative;

(6) Names and organization numbers of all affiliates to conferences or agreements, including trade names; and

(7) The publisher, if any, used to maintain the organization's tariffs.

(c) Taxiff record. The taxiff record for each tariff shall include:

(1) Organization number and name,

including any trade name;

(2) Tariff number;

(3) Tariff title;

(4) Tariff type (e.g., commodity, rules, equipment interchange, or bill of (ading);

(5) Contact person and address;

(6) Default measurement and currency units;

(7) Origination and destination scope;

(8) A statement certifying that all information contained in the tariff is true and accurate and no unlawful alterations will be permitted.

ferences shall publish in their tariffs any rule that affects the application of (d) Tariff rules. Carriers and conthe tariff. (e) Commodity descriptions. (1) For each separate commodity in a tariff, a Tariff publishers are not required to use any numeric code to identify com-HTS") for both the commodity coding modifies, but should they choose to do so, they are encouraged to use the U.S. (0.8)(definidistinct numeric code may be used. Harmonized Tariff Schedule and associated terminology tions).

Eederal Maritime Commission

a:(2) If a tariff publisher uses a numeric code to identify commodities, the following commodity types shall be prefixes, with the remaining digits at the ceded by their associated 2-digit prepublisher's option:

(i) Mixed commodities—"99"; (ii) Projects-"'98"; and

(iii) non-commodities, e.g., "cargo, n.o.s.," "general cargo," or "freight-all kinds"—"00".

equally valid common use names, such as, "Sodium Chloride," "Salt, comcouraged, however, to create multiple entries in the index for articles with. modity description created under this section shall have at least one similar resent the commodity within the al-(3) Commodity index. (i) Each comindex entry which will logically repphabetical index. Publishers are enmon," etc.

cludes two or more commodities, each included commodity shall be shown in (ii) If a commodity description inthe index.

"n.o.s." descriptions, and "FAK," shall (iii) Items, such as "mixed commodities," "projects" or "project rates, be included in the commodity index.

conditions. TRIs must contain the fol-(f) Tariff rate items. A tariff rate item ("TRI") is the single freight rate in effect for the transportation of cargo under a specified set of transportation lowing:

(1) Brief commodity description;

(2) TRI number (optional); (3) Publication date;

(4) Effective date;

(5) Origin and destination locations or location groups;

(6) Rate and rate basis; and (7) Service code.

tariff item, or creating multiple tariff items which are identical in all ways lisher may define and create groups of other tariff objects, in lieu of specifying particular place names in each (g) Location groups. In the primary tariff, or in a governing tariff, a pubcities, states, provinces and countries ports (e.g., port groups), which may be used in the construction of TRIs and or groups of location. groups) except for place names. (e.g.,

provide intermodal transportation to or from named (h) Inland rate tables. If a carrier or conference desires to

points/postal, regions; at a combination set forth the applicable charges in an "Inland Rate Pables" section An Inprovide an inland distance which is and plied to a per mile rate to calculate the rates, it shall clearly and accurately land rate table may be constructed 🚧 inland rate.

(i) Shipper requests. Conference tariffs shall contain clear and complete Hestructions, in accordance with the agreement's provisions, stating where and by what method shippers may the requests and complaints and how they essary, for processing the request a complaint. may engage in consultation pursuant to section, 5(b)(6) of the Act, together with a sample rate request form or

are not required to state separately or otherwise reveal in tariffs the inland division of a through rate.

\$ 520.5 Standard tariff terminology.

(a) Approved codes. The Standard Ter-(i) Inland divisions. Common carriers

codes, if they are clearly defined con etc., and units for weight, measure and distance. They are intended to provide a standard terminology baseline Id minology Appendix contains codes for tariffs to facilitate retriever efficienery. Tariff publishers may use additional rate bases, container sizes, service, their tariffs.

approximation of the state of t Mapping Agency ("NIMA") gazetter or the Geographic Names Information used in tariffs. Tariff publishers in rently in use and have not yet beenOn-System ("GNIS") developed by the U.S. (b) Geographic names. Tariffs showd employ locations (points) that are pholished in the National Imagery and Port Index (Pub. No. 150) should also use geographic names that are cluded in these publications.

§ 520.6 Retrieval of information.

present retrievers with the ability to: (a) General. Tariffs systems

(1) Search for commonly understood tariff objects (e.g., commodities, origins, destinations, etc.) without restricting such search to a specific tar-

VENGROW EXHIBIT C



B/L Clauses

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Italia Maríttima S.p.A.	E
Evergreen Marine (UK) Ltd. (Formerly Hatsu Marine Limited)	Ď

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RECEIVED by the Carrier from the Merchant in apparent good order and condition unless otherwise indicated herein, the Goods, or the Container(s) or other package(s) or unit(s) said by the Merchant to contain the ewgo herein menationed, to be carried object to all the terms and conditions contained or incorporated in this Bill (defined hereinafter at Clause II(1) including both front and back pages where issued in paper form and Carrier's Thaff rules and regulations by the vessel named herein or any substitute at Carrier's option and/for other means of transport, including the use of feeder ships, barges, trucks or rail cars, from the place of receipt or the loading port to the port of discharge or place of delivery shown herein and there to be delivered unto order or assigns. If issued in paper from and if required by the Carrier, this Bill (day) endorsed must be surrendered in exchange for the Goods or Delivery Order.

In accepting this Bill, whether in paper or electronic form, the Merchant agrees to be bound by all the stipulations, exceptions, terms and canditions contained or incorporated in this Bill whether written, typed, stamped, printed or otherwise, and as well, to be und by the Carrier's Thaff rules and regulations which are theemed incorporated herein, all of which supersede all provious agreements, including booking notes, dock and mate's receipts and like, any local customs or privileges to the contrary motivithstanding, eterms of this Bill shall be separable and if any part or terms hereof is invalid or unenforceable, the validity and entire the va

- insident.

 The control of Bill of Long, I fail to become at it is made as a fail of Long, or 10) her Wyshill did decument it insed as a Sea Waybill. Not writestading efficient and the control of the Control of Long and Control (2)

- Container includes any ISS standard container, trailer, transportable took, flut took and/or other item of temportation equipment in conformance with EO standards.

 Force Nijewer shall include, but not be limited by the work property of containing the property of the property of the containing the Con
- Currier's Tarilf. The seems of the Cartier's applicable Tariff are incorporated begin. If this fill it issued as a New Waybill, the CAST Raiss for Sea Woybilly, excluding Rule 4 are note incorporated begin. Copies of the relevant provisions of the applicable Tariff are obtainable from the Cartier apportunity. Copies of the CAST Rules for Sea Woybills can be obtained from the CAST website in synchronizations of the applicable Tariff or CAST Review, this fill it had provided that the applicable Tariff or CAST Review, this fill it had provided the CAST Rules of the CAST Review of inconditionary between this fill and the applicable Tariff or CAST Review, this fill it had provided the CAST Review of the CAST Review of
- 3. Merchant's Warranty. The Merchant warrants that in agreeing to the terms hereof he is, or has the authority of, the person owning or entitled to the possession of the Goats and this Bill.

- the London Jon van van j.

 4. Sub- Custract drull, sensible to sub-courses on any terms the whole or any part of the curriage, londing, unfosting, storing, worehousleg, heading and any and all index what tweety resistation by the Currier in relation to the Grout.

 (2) In verticating for the following exemptions and institution of and executation from Liability, the Currier is a close a signate of the effect of the course of the currier in the course of the currier in the course of the currier of the currier, as generate in the capture in the about Eagle active whether disading the Moster, efficients and care of the viscel, all operate and all Sub-Contractors) is, or stall be detented to be table whether taged except in the course of the currier is currier to balle of the Goods as currier, balles or other hardware. If, however, it all the eduplied that only one effect than the Currier is currier to balle of the Goods or the exercise from Liability provided by the early terms have a half to be a validable to each other. It is also great the entire of the expectation of the caption can be shown as inconded by the currier for active and the course of the course of the currier is currier.

- ther such of these persons and comparise referred to above are intended beneficiaries, but nothing here in highly to the Cariefe for data sixting in creating from their fault or neglect.

 5. Chose Paraments—for all Repossibility of Currier.

 (A) Claive Faraments—for a this Bill. recent the carriage of Goods by sea either by the Cariefe or its Sub-councers, the restract reidenced in this Bill.

 have affect subject to the Higgs Rotes, if and an enacted in the country of shipment, and any Legislation including, CRICSA which make these nodes compositive, applicable or effective. The Heiges Rotes, if and an enacted in the country of shipment, and any Legislation including, CRICSA which make these rodes compositive, applicable or effective. The Heiges Rotes and said Legislation shalls be deemed constructively interagenated berton also a part of this Contract regardless of whether it or they would otherwise be compositively applicable and nobing heard constanted shall be deemed a surrought by the Currier the contract, if the contract contract has been added to the contract that the contract, if the contract is the contract that it is a subject to the contract that it is a subject to the food as a contract to the contract that is a subject to the contract that is a subject to the contract that is a contract to the Carrier of the Subject and the Contract that is a contract to the Carrier of the Subject and the Contract that is an interaction of the Carrier of the Subject and the Contract that is a contract to the Carrier of the Carrier of the Carrier of the Subject and the Contract that is a contract out of the Carrier of the Carr

 - which shall no incorporated factors it a text come in a length and copies on an automaticity may be written from the factors and the property of the property of the factors and factors a

 - tutifit, if any. Necessitatanding the above provision, and carriage in the United Kinghom according to the Conditions of Carriage 1998 of Nord Hardage Association Limited.
 With any specia to carriage by most in Japan, according to the Sonthal Japanese Road Prosporation Classes (SPAIC). With respect to acting the proof of the Carriage by real in the Carriage by the Special Constraint of the Carriage by the Carriage by the Carriage by the Special Constraint of the Carriage by the Carriage by
 - When entertain modes and Sub-contractors' contract with the Carrier, and the Carrier state on sensor on a superior of the Merchant option of the Merchant option of the Merchant option of the Merchant option and obtained by subsequent of all sights of the Merchant option all obtained by subsequent of all sights of the Merchant option all obtained by subsequent of all sights of the Merchant option all obtained by subsequent of the Merchant option all obtained by subsequent of the Merchant option all obtained by subsequent of the Merchant option and obtained by subsequent option and obtained by s

- 6. Count Limitation.
 (1) The Carity does not undersize that the Goods shall sarrive as the post of allebarge or place of delivery as any particular time or to most any porticular enables or one and save as provided in Clause 5 the Carity shall in no circumstance be fillable for any buffers or consequential time or demange enancial by delay.
 (2) Some as strawing provided textic, the Carrist shall in an circumstance in the liable for distance in collector or consequential tous or demange enancial by delay.
- some as statemuse promound servar, the Carrier shall in no circumstances he liable for direct to indirect or consequential loss or descape afficiate, from any other Let Carrier shall be resulted to the fill beautiful of all rights and timenations and all liberalizations by we accomplishing provided in the London Currentines of 1976. Notwittending the foreigning, if freed low makes the Bravacki Convention of 1937 monitority applicable, their activated all nobe invalidations to the fall benefit of all rights and intermines and all limenations of, or exceptions for the state of the state of a line of a line shall be applicable, which is like 1. The Control shall be applicable, the fill and prepared to the Uniform State Ten Control of Market Control or any actions the state of t

- expectively.

 Amount of Compression and Limitation of Lishilip.

 (1) All Grims for which the Corier may be lither death engineed and acade on the least of the not invoice value of the Coord plus Intight and immunes.

 Note thinking the Rengion is it is great that is no even shall this clause squares to become the extent of the Coord plus Intight and immunes.

 Note thinking the Rengion is it is great that is no even shall this clause squares to become of the correct intight beyond the applicable number value at the part of the desire and invoice. In our word, that the Carrier he lished for up has no great of the correct that Bill covers Goods moreing and note a great to the desire and the correct that the Correct to the correct that Bill covers Cooks moreing the correct to the Cooks and the correct to the correct to the correct that Bill covers Goods more and the Cooks and
- 8. Notice of Claim and Time for Salt. Unless solice that so of change and a greated same of the know or durage by the price in whiting to his claim to all charges or place of delivery, before or at the fine of delivery of the floods, or, if the bas or a durage to be not appount, within does consciented sys after delivery, before or at the fine of delivery of the floods, or, if the bas or a durage be not appount, within does consciented sys after delivery, a desired to be a desired as described in this Still. In any course, necessary approximate of the or and include the desired of the angel in the latter of the still of the angel in the angel in the still of the angel in the angel in the still of the angel in the angel in the still of the angel in the angel i
- Defence and Limits for the Corrier. The defence and limits of liability provided for in this Bill shall apply in any action against the Carrier for loss or damage the Goods whether the action be founded in contract or in tors.
- time courses were the action be founded in contract or in fort.

 In Supper-Public Contract, the Currier shall not be likely for the contract and the Michael State of the Currier, the Currier shall not be likely for trace of the contract and the Mirchael shall indeenily the Currier against any loss, damage, likelily or expense incernal by the Currier. If such loss, though, likelily or expense is the trace current by the Currier of the Currier is the Currier against any loss, damage, likelily or expense incernal by the Currier is the Currier of the Currier or the Currier
- 11. Impection of Goods. The Carrier shall be entitled, but water no obligation, to open any Container at any time and to impect the contents. If it theretipon appear that the contents on any part frenor carrier safely or specify be carried fatter, eithers at all or without incurring any additional capsons on table any answerses in relation to Container, and the Container as only an incurrent safely and any answerses in relation to Container and any time containers and any answerses in relation to Containers and any analysis and any advantage and any advantage and analysis have up measures softer incurrent and additional extraories to early or the swelfines the carriage set to turn the water white or a filter turbule croter of in the open, at any place, which strongs thall be determed to constitute the delivery make with Bull. The Meterson table likewing the Carrier against any generously additional expenses to Sucreme depends on the contrainers and any additional expenses to Sucreme depends on the carrier and any additional expenses to Sucreme depends on the safe and any additional expenses to Sucreme depends on the safe and any additional expenses to Sucreme depends on the safe and any additional expenses to Sucreme depends on the safe and any additional expenses to Sucreme depends on the safe and any additional expenses to Sucreme depends on the safe and additional expenses to Sucreme depends on the safe and additional expenses to Sucreme depends on the safe and additional expenses to Sucreme depends on the safe and safe an

21. Description of Groods. The Carrier does not have facilities to welph stable Considers at the boding port and has minter imported the contents of nor weights the Considers. Any statements on this Build Tradings to marks and articulars, markes and fills of proclases, theoritimes, quality, quality, weight, reasons, nature, kind, values or other purchains of the contents of such Consider(s) are as furnished by the Merchant and ann advances to the Confer and the Carrier accepts no Habitity in respect thereof. The extended agreement of the Carrier accepts no Habitity in respect thereof. The extended agreement of the Carrier is confident of the Content accepts and the Carrier accepts no Habitity in respect thereof. The extended agreement of the Carrier is confident to the tunders and apparent order and condition of the Content accepts and the Carrier accepts no Habitity in respect thereof. The extended agreement of the Carrier accepts no that the carrier accepts no Habitity in respect thereof. The extended agreement of the Carrier accepts no Habitity in respect the confidence of the content accepts and the carrier accepts no Habitity in respect the confidence accepts and the carrier accepts no Habitity in respect the confidence accepts and the carrier accepts no Habitity in respect the confidence accepts and the carrier accepts no Habitity in respect the confidence accepts and the carrier accepts not have accepted and the carrier accepts not have accepted and the confidence accepts and the carrier accepts not have a confidence accepts and the carrier accepts not have accepted and the carrier accepts not have accepted and the carrier accepts not have accepted accep

- 33. Merchant's Responsibility.
 (b) A feet possibility to the Carries that the particular relating to the Goods as we are averted have been checked by the Merchant on receipt of this fell and that tack perticular is an any other particular familities by on the half of the Merchant are covere.
 2 The Merchant shell Informatify the Carrier against all buts, change and expresses unting or resulting from inaccuracies in, or inadequezy of, such particulars. The sight of the Carrier to such indemnity shall it no way final his responsibility and likelity scaler this fill to any person other than the Merchant to the likelity and the carrier to the Car

- 14. Fright and from the Curfer.

 (1) Fright and the great was a second of the control of the con
- island amount.

 Marchart of the Goods shall be jointly and according initio to Contrie for the payment of all freighs, Bunker Adjournest Factor (BAF), Currancy
 authors Factor (CAF), Terminal Heading Charge (HRC), denotings, detention, General Avenage, salvage and other charges, lackship but not limited to
 refuse, stages and other charges that distings for some similar factoring sarvages and other forces freight and lacegoes and freight forwardes,
 terror response other than the Certific, or its authorized agent, shall not be deemed payment to the Certific and shall be made at payer's salvation.
- 15. Here. The Carrier shall have a line no the Goods and any obscinents relating thereto for all sums payable to the Caster under this bill, or any other constraints with the Metchant and capearse incurred by the Carrier for the eccent of the Metchant and for Otereal Average and Salvage contributions to reharmence also and for the cort of recording is some and shall be for the secretary of the Metchant jointly and a recording or the Carrier shall have the right in its absolute discretion to dispose of the Goods and the Metchant jointly and a reharmence.

- 16. Oplianal Storage.
 (1) Observations between the based by the Carrier in Constituent articles of terrangent used to constitute Great.
 (2) Observations whether the Observation is considered to the Manchast, easy be carried use to use that which there to the Manchast, easy be carried use to use the Manchast, Great when there is no constituent with the constituent was not retained constituent with the retailed carried to the shorest lauracy constituent in parce or should be Constituent, was not retailed carried to the shorest lauracy constituent in the shorest lauracy carried to the constituent of the retained carried on the shorest lauracy and the COCSA, the Higher Rules or other computationly upplicable legislation.
- 17. Deck Cargo. Goods which are stated berein to be carried on deck, whether or not carried on deck, are carried without responsibility on the part of the Carrier fee loss or damage of whatscover name arting during carriege by sea whether caused by unreasonables so negligence of any other cause whatscover.

- those of distingent of shittenous matter string earning a sea was assessment of the property o

- Best Confessestion, etc. 1st agreed that specified and, midstoin or condensation tolds the Consistency or gift be, conting the conting the respective of the Confesses of Conf

- pecial feeight, as registed, must be past by the neutrana.

 A hithbort and factors of Transportation.

 (1) The Carrier may at any time and stillar and the Merchant. (a) we say means of transport or storage whitescence (b) seaded the Carrier may at any time and stillar and the name on smother vested than the visual owned overlant (c) purceed by any must in hit discretion (a better or not the natural or most different or entropy and percentage or carrier for the name on smother vested than the visual owned overlant (c) purceed by any must in hit discretions (a better or not the name of the natural or most different or entropy and entropy of the past vested than the visual owned overlant (c) purceed by any must in hit discretions (c) that and and indeed the Cooks it was purposed past to the same of the state of the same of th
- 23. Masters Affecting Performance, if at any time the performance of the entatest originously this (iii) is or is likely to be affected by any Force Majone bindenges, this, they, difficulty or discharating of discharating of discharating of discharating of discharating of the discharat
- 22. Wer Rife Expenses. The Carrier may at any time and without prior points to the Merchant impose numberges to conver all nature as peaces (including but not limited for othe between premiums and cents of direction) incurred by the Caulist as a result of the outbrack of var, hostifield, wor-the operation, civil way, civil connection, blockable, prior or workside magnitude or dischart health gold and per studied or the outbrack and the opperation seems the opporation of the companies are income.

- blocksky, firsty or resonant regentate or manage and management or manag
- 24. Regulations Relating to Goods: As a secula of Matchani, fallow to comply with such negulations or requirements of Custons, post and other authorities, Marchani shall be an only up of amounts incurred by the Contex in complying with such sure as verified of deter, taxes, fires, impost, expenses or boxes incurred or suffered or by reason of any plays, however or have there can take in, marching or addressing of the Books, and whenly the Courter in respect theres!

- Teacher and personal control of the Carrier and Bellever.

 (1) Any needs in lott Belle parties to be notified of the arrival of the Goods's while president.

 (2) The Merchant shall take delivery of the Goods within the time provided for in the Carrier applicable Turiff, istiling which the Marchant is labele to pay for the Carrier and the Carrier and the Marchant is labele to pay for the desired production of the Carrier and th
- reasts.

 The Herchant's attention is change to the permissions concearing fine stronge time and cargo and captioned drammage contained in the Carrier's pagificable tariff.

 Netrolithrateting anything circ in the concurry contained width only hell, where in accordance with healt legislation all import energy is discharged here to the concurry contained to the concurry contained with the circ proposal for the concurrent relation of the cargo in the piddle into one-dispute time permission.

 Description of the concurrent relation of the cargo of contained and proposal of relationships and proposal of concurrent relationships and proposal contained and proposal of contained and proposal contained and proposa
- i. Bolds-de-Himor Collision. If the Georgice) Skip comes for occilions with another thip as a result of the negligence of the order ship and any act, neglect or Bold in the newligelian or the measurement of the currying Skip, the Merchant tenderations on your the Carrier se, where the Currier is not the content and to present our results of the content of the cont
- For the rectange, Council, granding or other sections.

 17. General Arrange, General Average table to adjunct, stated and straight in Landon or any other plans selected by the Curity and according to the Yorkhamstop Rules 1991 energy Rule 1991 energy and the factor of the person by Average Adjuncts selected by the Curity in searce adjunctions, the business of the Curity in the Curity of the Curity and Adjuncts selected by the Curity in Searce 1991 energy and the Curity in the Curity in the exchanged from the rectange of the curity of the Curity in the port of final delaying of range Average agreement to be detailed as delaying an exceeding a final prescript of the 1991 energy of the Curity in the Curity of the Curity of the Adjunction of the Curity of the Adjunction of the Curity of the Curity
- 28. Variation of the Contract, etc. No servant or agent of the Cortier shall have power to waive or vary any turn of this Bill imless such waiver or variation is in writing and it specifically authorized or ratified in writing by the Cortier.

- 23. Law and distribution.

 (3) Governing Law Sixe whole the constraint of the bill of beling provide for nonther have in apply, this bill of beling shall be governed by, and its term and conditions that the constraint contribution is the following the bill of beling the bill of the bill of billions and the stream and conditions that the constraint of the printed that is the distribution of the printed bill of the billion of the contraint of the printed billion of the billion of t

VENGROW EXHIBIT D

Filed 05/22/2008 Page 15 of 51

BILL OF LADING

NOT NEGOTIABLE UNLESS CONSIGNED TO ORDER

ODICINAL

							OMOMY	XL/		
(2) Shipper/Exporter (Complete Name and Address, Zip Code) EMPIRE INTER-FREIGHT CORP. 3840 PARK AVE.						(5) Document No. 61852707				
EDISON,NJ 08820 TEL:732-846-6378						(6) Export References REF: EIF06033				
222,722			4	Shipper	code					
(3) CONSIGNER (complete name and address) / (unless provided otherwise, a consignment to Order of Shipper.) CHINA INTERNATIONAL FREIGHT LTD. (GUANGZHOU) ROOM 1109 ZHENGSHENG BLDG NO 5-9 TIAN HE BEI ROAD, GUANGZHOU, CHINA TEL: FAX:86-20-2886-9580							(7) Forwarding Agent (Name and Address, F.M.C No.) FMC 019719 FC CHK FREIGHT INC. 10 WHITEHALL ROAD EAST BRUNSWICK, NJ 08816			
ATTN: WILLIAM CHAO (4) Notify Party (complete name and address)							Point and Country of Origin (for the I	Merchant's reference only)		
SAME AS CONSIGNEE						(9)	Also Notify Party (complete name ar	d address)		
				Notify co	ode					
(12) Pre-carriage by			(13) Place of Receipt / Date COLONIAL HEIGHTS, VA			In Wilness Whereol, the undersigned, on behalf of Hatto Marine Limited, the Master and the Owner of the Vessel, has signed the number of Bill(s) of Lading stated below, all of this tenor and date, one of which being accomplished, the others to stand void.				
(14) Ocean Vessel / Voy. No EVER DELUXE 0233-066W			(15) Port of Loading NORFOLK, VA (17) Place of Delivery			(10) Onward Inland Routing / Export Instructions (for Merchant's reference only)				
(16) Port of Discharge HONG KONG			NGPU, C	•						
(18) Container No. And Seal No.	1 (40) Ougasti	i ond I	Pa	rticulars furn	ished by the M	ercha	ant	L /24) Manauromont (M ³)		
Marks & Nos. CONTAINER NO. / SEAL NO.	(19) Quantity Kind of Pack				(20) Descrip			(21) Measurement (M*) Gross Weight (KGS)		
EISU5667249/ 1730 / EMCU5208442/ 1731 / ETC-CH 090206 ETC-CH 090106	2 X 40' HQ REEFER CONTAINERS SLAC: 3,178.3203 CFT							74,015.000 LBS 33,572.679 KGS 3,178.3203 CFT 90.0000 CBM		
(22) TOTAL NUMBER OF CONTAINERS OR PACKAGES SAY (IN WORDS) 53 93 97	TOTAL:		THE UNITED REGULATION:	ODITIES, T	EECHNOLOGY A	MIZ	OFTWARE, WERE EXPORTED FROM THE EXPORT ADMINISTRATION U.S. LAW PROHIBITED.	"OCEAN FREIGHT PREPAID" SHIPPER'S LOAD & COUNT (23) Declared Value \$ If Merchant enters actual value of Goods and pays the applicable ad valorem Tariff rate, Corrier's package limitation shall not apply.		
(24) FREIGHT & CHARGES	Revenue Tor	ns		Rate	•	Per	Prepaid	Collect		
							;			
(25) B/L NO.	(27) Number of Original B(s)/L				··		(29) Prepaid at	(30) Collect at		
HTML THREE (3) 488618527078 (28) Place of B(s)/L Issue			Issue/Date NY SEP.14,2006				NEW YORK, NY (31) Exchange Rate	(32) Exchange Rate		
(26) Service Type / Mode FCL/FCL D/O	(33) Laden o SEP.14,	n Board	l .				EVERGREEN AME	RICA CORPORATION		
	VEVER DE	LUXE	0233-0		4		Better	1 Je		
FORM NO. DOC-0018-00 (TERMS OF E ENLARGED VE	ILL OF LADING A RSION OF BACK CL	RE CON' AUSE IS A	TINUED ON THE VAILABLE ON W	BACK HERE(ww.halsu-marine.	OF AND com)		AS AGENTS FOR THE CARRIER HIM	ALMATINE LIMITED (1)		

RECEIVED by the Carrier to the Carri

If issued in paper form and if required by the Carrier this Bill duly endorsed must be surrendered in exchange for the Goods or Delivery Order.

In accepting his Bill, whether in paper or electronic form, the Merchant agrees to be bound by all the stipulations, exceptions, terms and conditions contained or incorporated in this Bill whether written, typed, stamped, printed or otherwise, and as well, to be bound by the Carrier's Tariff rules and regulations which are deemed incorporated herein, all of which supersede all previous agreements, including booking notes, dock and mate's receipts and like, any local customs or privileges to the contrary notwithstanding. The terms of this Bill shall be separable and if any part or term hereof is invalid or unenforceable, the validity and enforceability of any other part or term shall not be affected.

Agents signing this Bill on behalf of the Carrier have only the limited authority at common law of a vessel's master signing a Bill.

An enforcement on this Bill that the Goods are "On Board" shall mean that the Goods are loaded on board the ocean vessel named in this Bill or loaded on board rail cars, trucks, lorries, feeder ships, barges, or other means of transportation and are in the custody of an Inland or ocean Carrier for Through Transportation in accordance with the terms of this Bill.

- Inditions.

 "Bill" means (a) Bill of Lading if this document is issued as a Bill of Lading, or (b) See Waybill if this document is issued as a Sea Waybill, Novelphusnoling anything disc constitution or plecorporated into this Bill. If it is issued as a Sea Waybill, it will not be a document of title to the Crooks.

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- Merchant's Warranty. The Merchant warrants that to agreeing to the terms bereof he is, or has the authority of, the person owning or expliced to the pot Goods and this Bill.

- 18. Sah-Contracting.

 (1) The Carrier shall be entitled to sub-contract on any terms the whole or any part of the entrings, Innding, unloading, storing, warchousing, handling and any and all duffules whitstoever undertaken by the Carrier in relation to the Goods.

 (2) In contracting for the following exemptions and limitation of and easoneration from liability, the Carrier is string as agent and trustee for all other persons enasted in his closure. It is understood and gareed that, where that the Carrier, no person, from or corporation or other larmly wholesever (including the Master, Officers and crew of the vexet, all agents and all Sub-Contactons 1 is, or shall be detented to be liable with support to the Goods as carrier, balles or nice r horsoever. If, however, it shall be adjudged that up on each think the contractive of the Goods as carrier, balles or the contractive of the Coods are appreciated to the contractive. Such analysis person that is also agreed that each of these persons and computed selected to harde collected. Such analysis phenetic constanted that be continued to faint or to releve these from liability to the Carrier for arts attaining or restabling from Bold Facility or sighter.
- that each of these persons and companies referred to above are intended obtain/curren, you manage means to be continued to the control of the

 - between the Carrier and a Sub-Contractor, responsibility for seefs following in insportation will be governed by the ferms and reconstruct of sub-contract which he incorporated between a still reconstruct as the contract of the incorporated between countries in Europe according to the Convention on the Contract for the International Carriage of Goods by Road (CARR), doed May 19, 1936, and during rail a energies between countries in Europe according to the International Agreement on Railway Transports (CARR), doed May 19, 1936, and during rail a energies between countries in Europe according to the International Agreement on Railway Transports (CARR) doed May 19, 1936, and during rail a energies between countries in Europe according to the International Agreement on Railway Transports (CARR) doed for the Carrier and the Carrier and the Carrier and Carriage and Carriage and Carriage and the Carrier and Carriage and Carriage and Carriage and Carriage and the United Standard Carriage and Carri

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 6. Groved Ligitaliance.

 (1) The Carrier does not understake that the Goods shall arrive at the port of discharge or place of delivery at any particular time or to meet any particular states or use and save as provided in Clause 5 the Carrier shall is no circumstances be liable for any indirect or consequential loss or damage caused by delay.

 (2) Save as otherwise provided in Clause 5 the Carrier shall in no circumstances be liable for direct or indirect or consequential loss or damage straining from any other cause.

 (3) The Carrier shall be entitled to the full kernells of all rights and immunities and all liabulations of, or exceptions from any other cause.

 (3) The Carrier shall be entitled to the full kernells of all rights and immunities and all liabulations of, or exceptions from any other constanced in my mistion flavor of any particular three contained in any mistion flavor of any particular three contained in any mistion flavor of any particular should be applicable.

 (4) Without waiter or infinition of any exception from or iliginizing of that illustrated by low or by his fall and pursuant of the Carrier and the cause of the Carrier and the carrier or any corporation owned by, subsidiary to, or associated or affinized with Carrier shall be liable for any loss or damage whereavers and whenever occurring by ration of any fire whistoneever, including plat accounting before loading on a relicitable from or distinguish of the carrier of the carrier or any corporation owned by, subsidiary to, or associated or affinized with Carrier shall be liable for any loss or damage whereavers and whenever occurring by ration of any fire whistoneever, including plat accounting before loading on a relicitable from or the first of such as a first or such as a proper of the carrier of the carrier or any corporation of the fire whistoneever, including that accounting before loading on a relicitable from the first of such carrier or such carrier or any corporation of the fire whistoneever, including that accoun

- respectively.

 Toward of Compensation and Limitation of Linkillity.

 All ribins for which the Carrier may be lished until the national and settled on the basis of the next levoice value of the Goods pairs freight and inswerce.

 All ribins for which the Carrier may be lished until the chance operate to increase the extent of the Carrier lishility beyond the applicable made; value as the port of diverage or place of delivery, if that he less than the net invoice value plas freight and inswerce. In no event shall the Carrier be liable for any loss of perfoit or my consequential loss.

 In the event this Bill: covers Goods moving to or from a port or front destination in the United States, the Carrier's limitation of liability in respect to the Goods shall not no event excell 1855. 500 per guitarge or, when the Goods are not alloged in packages, USSSO per customary list mail, to the event the Goods do the held inapplicable under the local law of the jurisdiction in which legal proceedings are brought and if the Goods covered by this Bill are subject to the Hange Rules or any amendments thereon, including the Hange Visty Amendments, therefore is lability to no exchange the desired the carrier has no solved any of the value of the Goods, and to the highest of the Goods, and the highest of the Goods, and the highest compensation than the provided theority may on the claimed made and what of the Goods, and the highest compensation than the provided theority may on the claimed made and any applicable Ad Valentan Helpelpi rate, it as on it is circumstant.
- have been decrated by use between secure amprican and agreed to by one learners are inscribed. The control of t
- 8. Notice of Claim and Time for Suit. Unless notice of loss or damage and a grant nature of such last or damage be given in writing to the Carrier as the port of discharge or place of delivery before or at the time of delivery of the Goods, or, it is a loss or damage be not apparent, within three consecutive days after delivery. On the Goods and the demend to have been delivered, the despended in this Bill. In any severt, accepts a psoroided in the next sentence, the consecutive days after delivery of the Goods or the delivery of the control of the delivery of the delivery of the control of the delivery of the control of the delivery of the de
- Defence and Limits for the Carrier. The defence and limits of liability provided for in this Bill shall apply in any action against the Carrier for loss or damage the Goods whether the action be founded in contract or in tort.
- B. Shipper-Packed Contributes. If can an econtract or in our.

 B. Shipper-Packed Contributes. If Contribute has not been filled, packed, antifect or loaded by the Carrier, the Carrier shall not be liable for loar or dumage to the contents and the Merchant shall indemnify the Center against any loss, damage, liability or expense incerned by the Carrier, if such loss, damage, liability or expense incerned by the Carrier, if such loss, damage, liability or expense contents on the Carrier in which the Continger has been filled, packed, solfider or loaded or (or by the unstability) of the contents of a corriage in Committees. The content of the Carrier is which the contents of the Carrier to the part of the Carrier of the Carrier of the Carrier of the Carrier of the purpose of the part of the Carrier of the Ca
- 11. Inspection of Goods. The Carrier shall be conitled, but under no obligation, to open any Container at any time and to inspect the centents. If it thereupon that the trontents or any part between constructive are properly be certified further, either at all or without incurring any additional response or taking any measures in related Container or the sourcests or any part thereof, the Carrier may shadoon the transportation before adduct takes on measures and/or any reasonable and any established despines to early or to contains the curriage or in store the same subnove or afford under cover or in the open, at any place, which sturges shall be deemed to co dide officing vitted with \$101. The Netherland shall identified hybrid the Carrier against any reasonable additional expense so incurred.

13. Description of Goods, The Carrier does not have facilities to which stated Constitutes at the loading port and have reliefee suspected the contents of not weighted the Constitutes. Any automents on this Bill Ledning or musts and constitutes, member and kind of packagest, description, operating, companie, quality, verple, excenter, settine, kind, value or other periodises of the contents of such Container(d) one as formithed by the Merchant and use unknown to the Carrier and the Carrier and capital container (d) one as formithed by the Merchant and use unknown to the Carrier and t

- 13. Merchant's Rasponsibility.

 (1) The Merchant warnats to the Carrier that the particulars relating to the Goods as set out overleaf have been checked by the Merchant on seccipt of this Bill and that such particulars and any other particulars formisted by set on behalf of the Merchant 214 correct.

 (2) The Merchant shall indemnify the Carrier against all loss, damage and expenses arising or resulting from inaccuracies in, or innecquescy of, such particulars. The right of the Carrier to such indemnity shall into one way loss this exponsibility and biblity under this fill to any person other than the Merchant.

 (3) Constitues, pallets or similar articles of immyour supplied by or on behalf of the Carrier shall be returned to the Carrier in the same order and condition as a handed over to the Merchant, normal verse and their except shall be independent of the Carrier. On the Carrier of the Carrier shall be related to the Carrier shall be related to the Carrier shall be plantly and solvently liable for any loss of, damage to, or delay incurred during the period between handing over to the consigner or the Merchant of the Charier.

- ond return to the Carrier.

 34. Freight and Charges.

 (1) Freight and be payable, at Carrier's option, on proceivable weight or measurement, or good discharge weight or measurement, or ad solvern basis, or package or contention of the discontinuous or an experiment of the Goods and proposed or an experiment of the Goods and proposed or an experiment of the Goods and proposed or an experiment of the analysis of the carrier was a large time to the carrier was a facility on the proposed additional freight in payable, the block or any additional freight in experiment of the Goods and an experiment of the Goods and the Carrier's discharge or an experiment of the Goods and the Carrier's discharge or destinations or subsequently, and the Carrier's discharge to present of the Goods shall be considered completely carried on receipt of the Goods by the Carrier or Underlying Carrier as the ease may be, whether the freight or charges to prepaid or to experiment of the Goods to the carrier of Underlying Carrier as the carrier was the carrier of Underlying Carrier as the carrier was the carrier of Underlying Carrier as the carrier was the carrier of Underlying Carrier as the carrier was the carrier was the Carrier and the

 - or in charges or in the classification between of the Goods is subject to consection, and it on conversions, the remainder of the Conditional pages.

 The Merchant of the Goods shall be jointly and executivy liable to Carrier for the gayment of all friends, the Carrier (APA). Forming the Merchant of the Goods shall be jointly and executivy liable to Carrier for the gayment of all friends. Butter Adjustment Factor (BAF), and Adjustment Factor (BAF), and the Mandling Charge (HCM), deturning, electioning, General Average, salvage and other charges, including but not limited to count cross, expenses and reasonable attorney's fees incurred in collecting award on the Carrier. Payment of occun freight and charges to a famight forwarder, broker or anyone other than the Carrier, or its authorized agent, shall not be deemed approach to the Carrier and shall be made at payer's soft of the Carrier and the carrier this RIII or any other conspects with
- 15. Lien. The Certier shall have a lien on the Goods and any documents relating thereto for all suns payable to the Carrier under this Bill: or any other contracts with the Meechant and expenses incurred by the Carrier for the account of the Merchant and for General Average and Salvage contributions to whomsovers due and for the cost of recovering the same and shall be for the account of the Goods and the Meethenic joining and executing and the Carrier shall have the sight in its absolute discretion to dispose of the Goods and/or to cell the Goods by public auction or private treaty without notice to the Meethenic, limits

- Optional Stowage.
 The Goods may be assowed by the Carrier in Containers or similar articles of transport used to consolidate Goods.
 Goods between the Goetstiners whether by the Carrier or the Merchant, may be carried on or under deck without notice in the Merchant. Goods (other than live unitarity) stowed in Goetstiners whether the good of the Carrier of the Accordance of the Carrier of the Stowage of the Carrier of the stowed under deck for all purposes, including Control Average and the COGSA, the fingue Rotes or other comprehence opposite the Epithema of the Committee of the Carrier of the Stowage of the COGSA, the fingue Rotes or other comprehence opposite the Epithema of the Committee of the Committee of the Carrier o
- 17. Deck Cargo. Goods which are stated herein to be carried on deck, whether or not carried on deck, are exerted without responsibility on the past of the Carrier for loss or damage of whatspower nature artising during carriage by sea whether caused by unseasonthiness or negligence or any other cause whatspower.

- 18. Special Container:

 (1) The Carrier shell not undertake to carry the Goods in refrigerated, heated, dasablated, venifisted or any other special Constainer(s) our to carry special Container(s) and to be behalf of the Merchan, as such, but the Currier will test such Goods or Cantainer(s) only so cottiansy goods or dry Container(s) energy goods or Container(s) only so cottiansy goods or dry Container(s) respectively, unless special arrangements we note on the face of this Bill and sit special freigh, as required, has been paid. The Carrier and the Alexhan and onloss such special arrangements we note on the face of this Bill and sit special freigh, as required, has been paid. The Carrier and the Alexhan and onloss such special arrangements we note to the face of the Carrier freight, as required, has been paid. The Carrier small not accept the freight and arrangement was reached to the carrier freight and required, has been paid. The Carrier and the State of the Carrier freight and the Carrier of the Carrier freight and the

19. Rust Condensation, etc. It is agreed that superficial rust, oxidation or condensation inside the Container or any like condition that to mointure is not the responsibility of the Carrier, onless said condition arises out of Carrier's failure to provide a seaworthy Container to the Merchant poor to loading. If the Merchant requires special arrangements or care for the carriage of sech Goods, he must request same in writing to the Carrier and said arrangements must be noted on the face of this Bill and all special freight, as required, must be pull by the Merchant.

- Freight, as required, most to gual to y the becension.

 The Charles may at any time and stuther of Transportation or a configuration of the state of

21. Matters Affecting Performance. If at any time the performance of the contract evidenced by this Bill. is or is likely to be affected by any Force Majeuse hindence, risk, cleby, difficulty or disadvantage of whiteocver kind which can not be avoided by the excession of reasonable endeatours, the Carrier (whether or not the transport is commenced may written route to the Merchant test the performance of bills Contract as translated and place the Goods or any oftens at the Merchant disaposate at any place or post which the Carrier may deem safe and convenient, whereupon the responsibility of the Carrier in respect of such Goods shall cesse. The Carrier shall nevertheless be entitled to full freight and charges on Goods received for transportation, and the Merchant shall pay any additional costs of carriage to and delivery and storage at such place or port.

22. War Risk Expenzes. The Cerrier may at any time and without prior corice to the Merchant impose surcharges to cover all extra expenses fluctuating but not limited to estata inversance poseitists and accoust of discussion licensed by the Carrier sa's a result of the coubtest of war, bouristics, war-like operations, civil war, eivil conumbition blockeds, piezes or evolution expendites of whether the Sible saided on so unless of a time due to expense are licensed.

- 23. Dangerous Goods.
 (1) The Metchart undertakes not to sender for transportation of any Goods which are of a dangerous, inflammable, radionnive, or classing eature without previously giving within notice of their nature to the Carrier and marking the Goods and the Consider or other covering on the outside as required by may have or regulations which transple applicable.
 And the Carrier updated and the Carrier and marking the Goods and the Consider or other covering on the countries are required by may have or regulations which was one of such Goods being entered for it transportation on fundation of carried by the Carrier updated all loss, thousand or expense directly or indirectly rising out of such Goods being entered for it transportation on fundation of carried they the Carrier updated and carriers had be undertaked and the carrier updated and carriers and the carrier updated and carriers and other authorities. Merchant

24. Regulation: Relating to Goods. As a result of Merchan's failure to comply with such regulations or requirements of Customs, port and other authorities, Merchant shall be at and pay at a sonous is rearred by the Currier in complying with same as well and ill distinct, suches, fine-integrates, expenses an least so incurred or suffered or by reason of any disgal, incorrect or institution and maintained metallicent marking, numbering or addressing of the Goods, and Indomally the Currier in respect thereof.

- Notification and Delivery.
 Any mension in this Bill parties to be notified of the arrival of the Goods is solely for information of the Carrier, and failure to give such position shall not involve the Carrier in any liability mor relieve the Marchant of any obligation hereunder.
 The Merchant shall take delivery of the Goods within the time provided for in the Carrier's applicable Tariff, failing which the Merchant is liable to pay for the detection/learnings charges as the rate supplicated in the Carrier's applicable Tariff.
 If the Merchant fails to take delivery of the Goods or pan of them upon explanation of the Tariff, prescribed feed time, the Goods shall be deemed to have been delivered to the Merchant and the Carrier may with or without online, that valley to its life, store or wavehouse UV to exclusioned Goods on the select risk and expense of the Merchant and the Carrier shall have a lien for all expenses incurred. Theseupon, the liability of Carrier in respect of the onclaimed Goods at the Section.
 - NOASE.
 The Merchant's siteration is drawn to the provisions concerning free storage time and cargo and equipment densurage contained in the Carrier's applicable tastif.
 Notwithstanding ampliing clue to the contrary contained within this Bill., where in accordance with local legislation all impost cargo is discharged into the custody of the point authority or carrows and such a particular in man are soldly reprosed to free the contract periods of the cargo of the cargo

26. Both-to-Diame Collision. If the (carrying) Ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or ideals it is the navigation or the management of the carrying Ship, the Metchant endersizes in pay the Certifer or, where the Crimic is not the women and in presentation and any act, neglect or ideals in the navigation or the management of the carrying Ship is the Metchant endersizes in the carrying ship of the navigation of the navi

tespect to a collision, contact, standing or other secifemi.

2). General Average. General Average shall be adjutted, stared and seided in London or any other place releated by the Carrier and according to the York/Autwerp Rules 1970 except Rule Taranoum thereof and as to matters not provided for by those Rules, according to the laws and usages in London. The General Average Rules 1970 except Rule Taranoum thereof and as to matter not provided for by those Rules, according to the laws and information of the General Average Assumes are recorded as the recording to the rate providing of the prepared by Average Adjutters elected by the Carrier's polyage and state in foreign currency shall be exchanged rise any currency at the Carrier's sporting as the past of payment and allowances for damage to cauge claimed in foreign currency shall be conceined as far the prevaling on the ist acts day of clinical accountly conceined as far the prevaling to the ist acts day of clinical accountly conceined as the prevaling to the ist acts day of clinical accountly conceined as the prevaling to the state of the conceined accountly conceined as the prevaling to the conceined accountly conceined as the prevaling to the conceined accountly conceined as the prevaling to the conceined accountly conceined as the conceined accountly conceined and the prevaling to the conceined accountly con

28. Variation of the Contract, etc. No servant or agent of the Carrier shall have power to waive or vary any term of this Bill unless such waiver or variation is in writing and is specifically authorized or ratified in writing by the Carrier.

- 29. Law and Jurisdiction.

 (1) Governing Law. Sare where the terms and conditions of this bill of lading provide for another law to apply, this bill of lading shall be governed by, and its terms and roudilitons shall be construed according to. English law.

 (2) Jurisdiction All clims and disputes under this Bill thall be determined by the High Court of Instite, England to the exclusion of the jurisdiction of the courts of any other country provided always that the Carrier vary in its absolute and sole discretion invoke or voluntarily submit to the jurisdiction of the courts of any other country which, but for the terms of his Bill of Lading, could properly assume jurisdiction to hear and determine such claims or disputes, but this shifl not consistion a solver of the terms of his provision for engry other claims or disputes. Not withstanding the provisions of Clause 29 [1] and (2) above, if the certispe includes certispe in, from or through a port in the United States of America, the Stateshers may refer any clim or disputes on the United States of America.

VENGROW EXHIBIT E

RECEIVED by the Carrier FOR IM Action is not been incorporated in this Bill (defined hereinafter at Clause [1]) including both front and back pages where Issued in paper form and Carrier's Tariff rules and regulations by the visicous to contain the cargo herein mentioned, to be carried the Carrier's option and/or other means of transport, including the use of feeder ships, barges, tracks or rail cars, from the place of receipt or the loading port to the part of discharge or place of delivery shown herein and there to be delivered unto order or assigns.

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Agents signing this Bill on behalf of the Carrier have only the limited authority at common law of a vessel's master signing a Bill.

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custody of an Inland or ocean Carrier for Through Transportation in accordance with the terms of this Bill.

- standards. Face Majorne shall include, but not be limited to, work stoppages, sivil communion, setiles, accidents, cannotizes, lockouse, fire, transponation disasters, evil of God, governmental estational of deciding governmental import restrictions and voluntary quotes striking from the durant of governmental restations), was or Series de la licelule, but not be limited to, work suppages, civil commodon, swiker, accidents, causalides, lockouts, fire, transportation disasters, acts to be suppared to the control of the control o (5)

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- 3. Merchant's Worranty. The Merchant warrants that in agreeing to the terms hereof he is, or has the authority of, the person owning or emitted to the performance and this Bill.

- A. Sub-Costracting.

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 (2) In constructing for the following exemptions and limitation of and excontration from liability, the Carrier is acting as agent and sunstre for all other persons named in this clarer. It is understood and agreed that, other than the Carrier no person, firm or corporation or other legal entity whistnesser (including the Mister, officers and crow of the vesse, all a spent and all Sinc's Constructors is or while the deemed to be liable with representations of the Goods as carrier, halife or other howstoeters. If however, it shall be adjudged that any one other than the Carrier is earlier or baile of the Goods as carrier, halife or other howstoeters. If however, it shall be adjudged that any one other than the Carrier is earlier or baile of the Goods as carrier, baile or other howstoeters. If however, it shall be adjudged that any one other than the Carrier is earlier or baile of the Goods or under any responsibility with respect thereo, all exemptions and campanies reterred to allow one or intended been facilities, but couldn't be such other. It is also agreed that each of these persons and campanies reterred to allow one intended been facilities, but couldn't be constanted to limit or to relieve them from liability to the Carrier for accounting or resulting or resulting from their faoil or neglect.

- that deep of these persons and companies retured to above are intended beneficiaries, but nothing herein contained shall be construed to limit or to relieve them from inhibiting the Carrier for seas uning or eventuing from their fault or neglect.

 Clause Paramount and Responsibility of Carrier.

 (A) Clause Paramount and Responsibility of Carrier of Sub-contained Cooks, which must character compiletys, spilituable or effective. The Huges Roles and and Legislation including CoOksA which must character carrier and the Carrier of Sub-contained of Sub-contained Cooks and must be deemed a surrounder by the Carrier or as Sub-contained of Sub-contained Cooks and the Carrier or as Sub-contained on the Carrier or as Sub-contained contained to the Carrier or as Sub-contained contained to the Carrier or any Sub-contained Cooks and CoOks Accept as any to contained static times are in the accord custody of the Carrier or any Sub-contained. When on the they are discharged from the Sub-contained Cooks and Law which cannot be departed from by private contract, then such provision shall be mult and void to the attent of such invalidity without invalidity of the Carrier or any Sub-contained. When the Cooks are and in the Sub-contained Cooks and the Sub-cont

- which shall be incorporated berein as if set funt at length and capite of said contracted) shall be available to the Merchant at any office of the Carrier upon request.
 With subject to made carriage between constraints in Europe according to the Convention on the Contract of the International Agreement on Railway Transports.
 With subject to made carriage between constraints in Europe according to the international Agreement on Railway Transports.
 Whith expect to rail or road carriage within a European country then according to the international Agreement on Railway Transports to represent the expect of the Contract of Cont
- Association Limited.

 (5) With respect to carriage by read in Japan, according to the Standard Japanese Road Transportation Clauses (SIRTC). With respect to carriage by read in Japan, according to the Standard Japanese Road Transportation Clauses (SIRTC). With respect to carriage by read in Japan, according to the Standard Japanese Road Transportation Clauses (SIRTC). With respect to carriage by read in Japan, according to the Japanese Enlawly Transportation Estimates Law and MinisteryInt Ordinance for Raidway Transportation (SIRTC). With respect to inland transportation of the Goods other than as provided in subparagraphs (1) through (5) supra, then according to the provisions of any International Convention on Notional Law which is complainty applicable in the country where the inland transportation give on if to such have or International Convention on Notional Law which is complainty applicable in the country where the inland transportation and the Carrier.

 Essent of Libbility for Through Transportation. In any event, the libbility of the Essential Conference, Limbaltons and transportation of Libbility contained therein.

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- Grazeral Limitations.
 The Chariter does not undertake that the Goods shall arrive at the port of discharge or place of delivery at any particular time or to meet any particular market or use and spare at provided in Clause 5 the Carrier shall in no circumstances be liable for any indirect or consequential loss or change caused by delay.
 Save as otherwise provided herein, the Carrier shall in no circumstances be liable for officer or indirect or consequential or damage aring form any other rance.

 - Save as otherwise provided herein, the Currier shall is no electromateness be finished for question instruction consequences arona to unusque acting some my increase.

 The Currier shall be entitled to the full benefit of ell rights and immunities and all limitations of, or extemplians from limitility provided in the Leadon Constraints of 1975. Non-indiamoling the foregoing, if local law makes the Brussels Convention of 1975 motionly applicable, these said later Art will be Controlled to the Currier shall also be entitled to the full benefit of all rights and immunities and all limitations of, or exemptions from inhibity entitled in any rational law the currier shall be controlled to the full benefit of all rights and immunities and all limitations of, or exemptions from inhibity entitled in any rational law extended from the currier shall be controlled to the controlled of the currier shall be controlled to the controlled of the currier shall be controlled to the controlled of the currier shall be controlled to the currier shall be benefit of any time of the controlled with Currier shall be benefit of any controlled to the currier shall be benefit of the currier shall be controlled to the currier shall be the currier shall be controlled to the currier shall be controlled to the currier shall be controlled to the currier shall be the currier shall be controlled to the currier of the currier shall be controlled to the currier of the currier shall be controlled to the cur (4)

- 7. Amount of Compensation and Limitation of Liability.

 (1) All chains for which the Carrier may be liable shall be adjusted and sended on the basis of the net invoice value of the Goods plus freight and insurance. Nowithstanding the foreging it is agreed that in no event shall this clause operate to increase the extent of the Carrier's liability beyond the applicable market value as the port of discharge or place of delivery. If that he is at most now on invoice value plus freight and insurance. In the port of increase of the port of increase of the control of the Carrier's liability beyond the applicable market value as the port of increase value in the Carrier's liability per control of the plus of the port of the port of the properties in the Carrier's liability are recent that the Carrier's liability are controlled to the plus Rules of the parkages, when the Goods are on hisport in packages, (18550) per controlled the interest of the plus Rules or any manadraments thereon, including the Hague Vilve, Ammidente, then Carrier's liability are recent of the control of the Carrier's liability to be control of the control of the Goods are not all the control of the Carrier's liability are recent of the control of the Control of the Carrier's liability to the control of the Carrier's liability are recent of the Carrier's liability are an accordance of the value of the Control of the Control of the Carrier's liability to the Carrier's liability are an accordance of the Carrier's liability to the Carrier's liability are accordanced by the Merchant before shipment and agreed to by the Carrier and intered in bis Bill and any upplicable Ad Valuence freight are, as set of the Carrier's liability and the control of the control of the Carrier's liability and the carrier and intered in bis Bill
- 8. Notice of Claim and Time for Sull. Unless notice of loss of damage and a general nature of such loss or damage be given in writing to the Currier at the poet of dischage or pixes of delivery before or at the time of delivery of the Goods, or, if the lost or damage be not appearen, within these reconcurries days after delivery, become at the time of the contract of the contract and the extraction of the contract of the co
- Defence and Limits for the Carrier. The defence and limits of Hability provided for in this Bill shall apply in any action against the Carrier for loss or damage to the Goods whether the action be founded in contract or in tor.
- In S. Shipper-Peterd Considers, It is Consider that not been filled, packed, stuffed or tosted by the Carrier, the Carrier shall not be fished for loss or damage to the content and the Marchant shall indeemly the Carrier against any loss, demage, liability or expense incurred by the Carrier, it such loss, damage, liability or expense incurred by the Carrier, it such loss, damage, liability or expense incurred by the Carrier, it such loss, damage, liability or expense incurred by the Carrier, it such loss, damage, liability or expense or (c) the institution of the Consider against the Carrier to the Carriage in Containers or (c) the institution of the Consider against the Carriage and the Carrier are cannoted by the Carriage and the Carrier of the purpose for whele his president of cold the purpose for whele his president of cold the Consider was filled, packed, suffed or loaded, or (c) the discount rule to the special substances within Considerary packed by the Mechant or inside Goods supplied by the Merchant, and so the Carrier in response are on their filled substances. Shipped on Board or Clean on Board relates safely to the Considerary and not to the contents thereof. This fill shall be subject to Section 2011 of the U.S. Pedent Blue of Lader, Act, 49 U.S. C, the Pomeron Act, and of it is agreed that the Carrier is entitled to this section's fell prosection for the entire period the Goods are in the currier rule of the Carrier in response to the content of the Carrier in response for the entire period the Goods are in the currier of the Carrier in response to the content of the Carrier in response to the carrier period the Goods are in the currier of the Carrier in response to the content of the carrier period the Goods are in the currier of the Carrier in response to the carrier period the Goods are in the currier of the Carrier in response to the carrier period the Goods are in the currier of the Carrier in response to the Ca
- 11. Inspection of Goods. The Carrier shall be entitled, but under no obligation, to open any Conteiner at any time and to inspect the contents. If it therrupon appear that the contents on any thread Cunnet and layer properly be curried further, either at all or without incorring any additional expense or during any measures in relation to the Contenter are in contents or any part henerof, the Carrier may absonotion the errapportation thereof and/or take any measurest and/or incorr any reasonable additions to the contents or any part henerof, the Carrier may absonotion the errapportation that or any part henerof, the Carrier may absonote the content of any any place, which some part here in the content of the content

12. Description of Goods, The Carrier does not have feelilities to weigh scaled Containers at the loading port and has neither inspected the contents of nor weighed the Containers. Any statements on this Bill relating to marks and numbers, number and kind of package, description, quantity, quality, weight, measure, nature, kind, value or other particulars of the contracts of such Constitució) are as funcished by the Merchant and are unknown to the Carrier and the Carrier scents no Hability in respect thereof. The acknowledgement of the Carrier is confined to the number and apparent softer and condition of the Containers.

- Merchant's Responsibility.
 The Merchant warrants to the Carrier that the particulars relating to the Goods as set and overleft have been elected by the Merchant on receipt of this Bill and that such particulars and any other particulars furnished by or on behalf of the Merchant are current.
 The Merchant shall indemnify the Carrier against all loss, damage and expenses arising or condition from intercancies in, or inadequize, of, such particulars. The right of the Carrier to solve indemnity which in no way limit his exponsibility and inhibition under his Bill to any generate hand be derected.
 Constitutes, pallets or sizellar articles of transport supplied by or on behalf of the Carrier thall be returned to the Carrier in the same owner and condition as handed over to the Merchant, normal were and tear excepted, with haterion science and whithin the time prescribed in the reverbiese. The Merchant of the Goods shall be jointly and severally liable for any loss of, damage to, or delay incurred during the period between handing over to the consignate and return to the Carrier.

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 14. Fright and Charges.

 (1) Freight shall be payable, at Carrier's option, on goos intake weight or measurement, or goos discharge weight or measurement, or ad valorem basis, or apachage or customary freight unit basis or any other applicable pice as set forth in Carrier's Tariff. Freight may be calculated on the basis of the description of the Goods framided by the Michael has Carrierian and additional freight in grayable, the Microbian discharges or customary freight units to examine contents. In accordance of the control of t
- 15. Lien. The Currier shall have a tien on the Goods and any documents reliating thereto for all sunts parable to the Carrier shall have a tien on the Goods and any documents reliating thereto for all sunts parable to the Carrier this Bill or any other contracts with the Merchant and expenses featured by the Carrier for the account of the Merchant and for Greated Average and Solvage contributions to whomsoever the and for the cast of recovering the same and shall be for the account of the Goods and the Merchant Jointly and severably and the Carrier shall have the right in its absolute discretion to dispose of the Goods and/or to self the Goods by public accition or private treaty without under to the Merchant.

- 16. Optional Stawage.
 (1) The Goods rasy be stowed by the Currier in Containers or similar enticles of reasport used to consolidate Goods.
 (2) Goods toward in Containers whether by the Currier or the Merchan, usup the certified on or under deck without motice to the Merchant. Goods (other than live animals) stowed in any covered-in parts or loaded in Constituters, was no trainers certified on the challe by deepend to be stowed under deck for all purposes, including General Average and the COGSA, the Hague Roles or other compulsority applicable legislation.
- 17. Deck Cargo. Goods which are stoted betein to be carried to duck, whether or not carried on deck, are carried without responsibility on the part of the Carrier for loss or damage of whatsoever nature arising during carriage by sea whether caused by unseawardiness or negligence or any other cause whatsoever.

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 (1) The Carrier shall not undertake to carry the Goods in refrigenced, heated, insulated, wouldated or any other special Constainate(s) not to easy special Constainate(s) not to easy special Constainate(s) part of the Carrier shall not undertake the Merchant, as such, but the Carrier shall test such Goods or Constainate(s) only as collisions poods or dry Constainate(s) expected to invating between the Constainate(s) are represented to a sufficient special constainate(s) are represented to the first of this Bill and all special fright as regarded, has been paid. The Carrier shall not accept responsibility for the function of special Constainate(s) supplied by or on behalf of the Merchant,

 (2) As regards the Goods which have been suggested as be carried in special Constainate(s), the Carrier or its Sub-contraction shall not be responsible for customistic accepts the Endowed the Goods which have been suggested as be carried to special Constainate(s), the Carrier or its Sub-contraction shall not be responsible for customist accept the Endowed the Goods which have been suggested as be carried to special Constainate(s), the Carrier or its Sub-contraction shall not be responsible for customist accept the Endowed the Carrier of the C

19. Bust Condensation, etc. It is agreed that superficial rust, oxidation or condensation inside the Container or may like condition that to moisture is not the responsibility of the Currier, unless said condition arises out of Currier's failure to provide a seaworthy Container to the Merchant prior to loading. If the Merchant copines special branchement of the Currier and said arrangements must be noted on the face of this Bill and all special fields, as required, must be noted on the face of this Bill and all

- 20. Methods and Routes of Transportation.

 (1) The Carrier may as any men and without notice to the Merchant: (6) use any means of irrasport or storage whosoever; (b) transfer the Goods from one conveyance or monthly further than the carrier may as any means of irrasport or storage whosoever; (b) transfer the Goods from one conveyance or monthly further than the carrier to the port (whicher or on any such port to the carrier to the carrier to the carrier to the port to the carrier to the carrier to the protection of the carrier to the carri
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1). Matter afficiency Preformance, if as my time the performance of the consect evidenced by this Bill is us is likely to be affected by any Force Majeuze hindrance, which childry, districtly distributions of what processes and which cannot be avoided by the exercise of sessonable endeavours, the Currier (whether or not the transport is commenced) ray without any statement of the control of th

22. War Risk Expenses. The Cerrier may at any time and without prior motice in the Merchant impose surcharges to cover all extra expenses, finebuling but not limited to carea instructive permittens and costs of diversion) incurred by the Centrier as a result of the outbeals of vor, hostifities, was like appealons, civil war, civil commotion, blockate, place or revolution regardless of whether the Risp statile or as made or is underway at the time the expenses are forecast.

- 3). Dangerous Goods,

 (1) The Herchani undertakes not to tender for treasportation of any Goods which are of a dangerous, inflammable, redirective, or damaging numer without previously utility written notice of their nature to the Carrier and marking the Goods and the Consider or other covering on the conticle as required by any bases or expensionally the properties.

 (If the properties of the conticle are compiled with, the Merchant shall indemnify the Carrier against all loss, damage or expense directly or inducedly artifing out of notel Goods being noticered for transportation or hundred or carried by the Carrier.

 (S) Goods which are or at any one become dangerous, inflamenable, radiactive or damaging may, at any time or place, be tenloaded, destroyed, or rendered harmless without congenutation, and if the herecamb plant not given notice to the Carrier under (1) above, the Carrier shall be under no liability to make any General Average contribution in respect of such Goods.

24. Regulations Relating to Goods. As a resist of Merchant's failure to comply with such regulations or requirements of Customs, port and other authorities, Merchan shall beet and pay all amounts incurred by the Currier in complying with same as well as all duties, meet, faces, impost, expenses or losses incurred or suffered or by reason of any fligad, incorrect or insufficient marking, multibaring or addressing of the Goods, and infementify the Currier in segrect thereigh.

- 25. Notification and Delivery.
 (1) Any mention in this Bill parties to be notified of the arrival of the Goods is solely for information of the Carrier, and fallace to give such notification shall not involve the Carrier in any liability nor relieve the Merchant of any obligation hereunder.
 (2) The Merchant shall take delivery of the Goods within the time provided for in the Carrier's applicable Tarief, falling which the Merchant is liable to pay for the desertant/experience francise that the arrival parties are in the state of the Merchant is liable to pay for the desertant of the Carrier's applicable and the Carrier are included in the Carrier's applicable and the Carrier in the Carrier's applicable and the Carrier in and the Carrier may with ne without notice, but subject to its life, some or warehouse the unclaimed Goods at the sole risk and agreess of the Merchant and the Carrier may with ne without notice, thut subject to its life, some or warehouse the unclaimed Goods at the sole risk and agrees of the Merchant and the Carrier shall have a lien for all expenses incurred. Thereupon, the liability of Carrier in expect of the unclaimed Goods at the sole risk and expense of the Merchant and the Carrier shall have a lien for all expenses incurred. Thereupon, the liability of Carrier in expect of the unclaimed Goods at the sole risk and appears of the Merchant and the Carrier is a lien for all expenses incurred. Thereupon, the liability of Carrier in expect of the unclaimed Goods at the sole risk and appears of the Merchant and the Carrier shall have a lien for all expenses incurred. Thereupon, the liability of Carrier in expect of the unclaimed Goods at the sole.
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36. Both-to-Blame Collicion. If the (currying) Ship comes into collicion with another ship as a result of the engigence of the other ship and any act, neglect or default in the newlystion or the management of the carving Ship, the Merchant undertanks; to pay the Carrier or, where the Carrier is not the course and to passession of another control of the carrier of the carrier

respect to a collision, conset, stranding or other accident.

27. Guerral Average. Guerral Average shill be adjusted, stated and striled in London or any other place acticated by the Carrier and according to the Yorl/Annwerp Rules 1994; except Rule Paramount thereof and as to matters not provided for by those Rules, according to the laws and usages in London. The General Average Rules 1994; except Rule Paramount thereof and as to matters not provided for by those Rules, according to the laws and usages in London. The General Average adjustment, disbustments in foreign currency shall be exchanged into any currency of the State of the Carrier of the Carrier, the average adjustment, disbustments in foreign currency shall be exchanged into any currency classification of the Carrier, must be fundated before the delivery of the Goods. Such changes of the Average Adjustment, and the Carrier of its aprint any subsequent and provident providents to cover the estimated coattbinston of the Goods and any subsequent and provident control of the Carrier of the Carrier

28. Variation of the Contract, etc. No servant or agent of the Currier shall have power to waive or vary any term of this Bill unless such waiver or variation is in writing and is specifically authorized or ratified in writing by the Carrier.

- Law and Jurisdiction.
 Coverning Law: Saw: where the terms and conditions of this bill of lading provide for another law to apply, this bill of lading shall be governed by, and in terms and conditions shall be continued according to, English law.
 Jurisdiction: A lating and disputes under this Bill Shall be determined by the High Court of Nestice, England to the exclusion of the jurisdiction of the courts of any other courts.
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LENNON, MURPHY & LENNON, LLC Attorneys for Plaintiff CANTONE & CO., INC. The GrayBar Building 420 Lexington Avenue, Suite 300 New York, NY 10170 (212) 490-6050 – phone (212) 490-6070 - fax



CIV 6602

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

CANTONE & CO., INC,.

07 Civ.

Plaintiff.

ECF CASE

- against -

COMPLAINT

SEAFRIGO a/k//a SEAFRIGO MARESEILLE,

Defendant.

Plaintiff, CANTONE & CO., INC. (hereinafter "CANTONE" or "Plaintiff") by and through its attorneys, LENNON, MURPHY & LENNON, LLC, as and for its Verified Complaint against the Defendant, SEAFRIGO a/k/a SEAFRIGO MARSEILLE (hereinafter "SEAFRIGO" or "Defendant"), alleges, upon information and belief where indicated, as follows:

- This is an admiralty and maritime claim within the meaning of Rule 9(h) of the 1. Federal Rules of Civil Procedure and 28 United States Code § 1333.
- 2. At all times material to this action, CANTONE was, and still is, a corporation duly organized under, and existing by virtue of, the laws of the State of Delaware and has a principal place of business in New York, New York.

- 3. Upon information and belief, and at all times material to this action, SEAFRIGO was, and still is, a foreign company duly organized and operating under foreign law with a principal place of business in Le Havre, France.
- At all times material to this action, Defendant SEAFRIGO was and is now 4. engaged as a freight forwarder and acted in the transaction at issue as a common carrier of cargo by water for hire.
- At all times material to this action, CANTONE was the cargo owner and receiver 5. of 1500 packages of frozen ready-to-bake bakery products stowed within a freezer container.
- 6. At all times material to this action, SEAGFRIGO was the Carrier of the above cargo pursuant to a freight forwarding agreement and bill of lading number E35039700000 dated September 22, 2006 issued by Seafrigo Marseille.
- 7. Plaintiff's cargo was loaded in good order and condition on board the motor vessel "Stadt Wismar" (hereinafter "vessel") under the aforesaid bill of lading for carriage from Le Havre, France to Newark, NJ.
- 8. The vessel arrived at Newark, NJ on or about October 3, 2006 and unloaded the Plaintiff's cargo.
- 9. On discharge the Plaintiff's cargo was found to be damaged due to defrosting, thawing and re-freezing of the cargo which occurred during the voyage.
- 10. The aforesaid damage to Plaintiff's cargo was caused due Defendant's breach of its obligations as Carrier under the contract of carriage pursuant to which it was obligated to deliver the cargo to Plaintiff in same good order and condition as when the cargo was loaded on the vessel.

- 11. Defendant was negligent in its care and custody of the cargo in that, *inter alia*, it failed to ensure that the refrigerated container into which Plaintiff's cargo was loaded was in proper working order, it failed to ensure that the cargo was properly stowed and handled on the vessel, it failed to provide contracted for specialized accessorial services, and/or failed to ensure that the same was in proper working order and condition, including temperature controlled care of the cargo during all periods of custody and carriage, and in that it otherwise failed to properly arrange for the cargo to be safely carried aboard the vessel.
 - 12. In addition, Seafrigo breached its duty as bailee of the cargo.
- 13. As a result of the Defendant's negligence and breach of contract as above described, Plaintiff has suffered damages in the principal sum of \$50,000.00, exclusive of prejudgment interest, incidental and/or consequential damages, reasonable attorney's fees and litigation costs.
- 14. Despite due and repeated demand, Defendant has failed and/or refused to pay the sums due owing to Plaintiff.

PRAYER FOR ISSUANCE OF MARITIME ATTACHMENT AND GARNISHMENT PURSUANT TO SUPPLEMENTAL ADMIRALTY RULE B

15. The Defendant cannot be found within this District within the meaning of Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure, but, upon information and belief, Defendant has, or will have during the pendency of this action, assets within this District and subject to the jurisdiction of this Court, held in the hands of garnishees within the District which are believed to be due and owing to the Defendant.

16. The Plaintiff seeks an order from this court directing the Clerk of Court to issue Process of Maritime Attachment and Garnishment pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, attaching, *inter alia*, any assets of the Defendant held by any garnishee(s) within the District for the purpose of obtaining personal jurisdiction over the Defendant, and to secure the Plaintiff's claim as described above.

WHEREFORE, Plaintiff prays:

- A. That process in due form of law issue against the Defendant, citing it to appear and answer under oath all and singular the matters alleged in the Complaint, failing which default judgment be entered against the Defendant, SEAFRIGO a/k/a SEAFRIGO MARSEILLE, in the principal amount of Fifty Thousand Dollars and No/100 (U.S. \$50,000)., plus Plaintiff's incidental and/or consequential costs and damages, plus prejudgment interest at the rate of 9% per annum and post-judgment interest as may be allowed by the Court;
- B. That since the Defendant cannot be found within this District pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, this Court issue an Order directing the Clerk of Court to issue Process of Maritime Attachment and Garnishment pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, attaching all goods, chattels, credits, letters of credit, bills of lading, effects, debts and monies, tangible or intangible, or any other funds up to the amount of \$60,000.00 belonging to, due or being transferred to, from, or for the benefit of the Defendant, including, but not limited to, such property as may be held, received or transferred in Defendant's name, or as may be held, received or transferred for its benefit at, moving through, or within the possession, custody or control of banking/financial institutions and/or other institutions or such other garnishes to be

named, and that all persons claiming any interest in the same be cited to appear and pursuant to Supplemental Admiralty Rule B answer the matters alleged in the Complaint;

- C. That this Court retain jurisdiction over this matter through the entry of any judgment or award associated with any of the claims currently pending, or which may be initiated in the future, including any appeals thereof;
- D. That this Court award Plaintiff the attorneys' fees and costs incurred in this action;
- E. That the Plaintiff has such other, further and different relief as the Court may deem just and proper.

Dated: New York, New York July 23, 2007

LENNON, MURPHY & LENNON, LLC

Kevin J. Lepnon (KL 5072)

Attorney for Plaintiff

The GrayBar Building 420 Lexington Avenue, Suite 300

New York, NY 10170

(212) 490-6050 - phone

(212) 490-6070 - fax

Our ref.: 07-1040

VERIFICATION

State of New York)		
)	\$8.:	City of New York
County of New York	.)		

- 1. My name is Reto Cantone.
- I am over 18 years of age, of sound mind, capable of making this
 Verification, and fully competent to testify to all matters stated herein.
 - 3. I am the President of Cantone & Co., Inc, the Plaintiff herein.
- 4. I have read the foregoing Verified Complaint and know the contents thereof and believe the same to be true and accurate to the best of my knowledge, information and belief.
- 5. The source of my knowledge and the grounds for my belief is my personal involvement in the subject transaction and the documents and information maintained within the files of Cantone & Co., Inc. on this matter.
 - 6. I am authorized to make this Verification on behalf of the Plaintiff.

Dated:

New York, NY July 20, 2007

Reto Cantone

VENGROW EXHIBIT H

9011/SHV

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

07 CV 6602 (PKL)

CANTONE & CO., INC.,

Plaintiff,

- against -

ANSWER

SEAFRIGO a/k/a SEAFRIGO MARSEILLE,

Defendant.

Defendant, SEAFRIGO MARSEILLE, by its attorneys, Cichanowicz Callan Keane Vengrow & Textor, LLP, for its answer to the complaint, alleges on information and belief:

- 1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of para. 1.
- 2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of para. 2.
 - 3. Denies the truth of the allegations of para. 3.
 - 4. Denies the truth of the allegations of para. 4.
- 5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of para. 5.
 - 6. Denies the truth of the allegations of para. 6.
- 7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of para. 7.
- 8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of para. 8.

- 9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of para. 9.
 - 10. Denies the truth of the allegations of para. 10.
 - 11. Denies the truth of the allegations of para. 11.
 - 12. Denies the truth of the allegations of para. 12.
 - 13. Denies the truth of the allegations of para. 13.
 - 14. Denies the truth of the allegations of para. 14 except admits nonpayment.
 - 15. Denies the truth of the allegations of para. 15.
- 16. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of para. 16

FIRST AFFIRMATIVE DEFENSE

17. This Court lacks jurisdiction over defendant's person.

SECOND AFFIRMATIVE DEFENSE

18. Defendant has not been served with a summons herein, and no summons issued in this action would be sufficient to compel defendant's appearance since this Court lacks both general and specific jurisdiction over defendant's person.

THIRD AFFIRMATIVE DEFENSE

19. Pursuant to F.R.Civ.P. Admiralty & Maritime Supplemental Rule E(8), defendant's appearance in this action is restricted to the defense of the claims herein for which plaintiff has obtained attachment or garnishment of defendant's property, and in any event is not

an appearance for the purposes of any other claim with respect to which such process is not available or has not been served.

FOURTH AFFIRMATIVE DEFENSE

20. The Rule B attachment and garnishment herein is invalid, and the circumstances of the said attachment and garnishment show a want of equity warranting its vacation.

FIFTH AFFIRMATIVE DEFENSE

21. The complaint pleads a claim arising out of a bill of lading contract for the carriage of goods by sea from a foreign port to a U.S. port issued by defendant as common carrier. If those allegations are true, then the rights and obligations of the parties are subject to the U.S. Carriage of Goods by Sea Act and the bill of lading. This defendant claims the benefit of all applicable laws, contracts and tariffs.

SIXTH AFFIRMATIVE DEFENSE

22. Defendant claims the benefit of any forum selection or choice of forum provision contained in the applicable contracts.

SEVENTH AFFIRMATIVE DEFENSE

23. This action should be dismissed on grounds of forum non conveniens.

EIGHTH AFFIRMATIVE DEFENSE

24. The cargo loss and damage complained of occurred, if at all, as a result of the inherent vice or defect or pre-existing condition of the goods, or as a result of the fault or neglect of plaintiff or those for whom plaintiff is responsible.

NINTH AFFIRMATIVE DEFENSE

25. Plaintiff did not mitigate its damages.

WHEREFORE, defendant, SEAFRIGO MARESEILLE, respectfully requests the following relief:

- A. Judgment dismissing the complaint and awarding defendant the costs and disbursements of this action; and
- B. An order vacating plaintiff Rule B attachment and garnishment and granting defendant all damages caused by plaintiff's wrongful attachment and garnishment.

Dated: New York, NY, August 24, 2007

CICHANOWICZ, CALLAN, KEANE, VENGROW & TEXTOR, LLP Attorneys for Defendant SEAFRIGO MARSEILLE

By: Stephen H. Vengrow
Stephen H. Vengrow (SHV-3479)
61 Broadway, Suite 3000
New York, New York 10006-2802
(212)344-7042

TO: Opposing Counsel

CERTIFICATE OF SERVICE BY REGULAR U.S. MAIL AND BY ECF

The undersigned declares under penalty of perjury that the following is true and correct:

- 1. I am over the age of eighteen years and I am not a party to this action.
- 2. On August 24, 2007, I served a complete copy of Seafrigo's Answer to Plaintiff's Complaint, by regular U.S. mail and by ECF, to the following attorneys at their ECF registered address and at the following address:

To: Kevin John Lennon Lennon, Murphy & Lennon, LLC The GrayBar Building 420 Lexington Avenue Suite 300 New York, NY 10170 (212) 490-6050

Fax: (212) 490-6070 Email: kjl@lenmur.com

> s/ Jessica De Vivo Jessica De Vivo

DATED: August 24, 2007

New York, New York

VENGROW EXHIBIT I

ECF

U.S. District Court United States District Court for the Southern District of New York (Foley Square) CIVIL DOCKET FOR CASE #: 1:07-cv-06602-PKL

Cantone & Co., Inc. v. Seafrigo Assigned to: Judge Peter K. Leisure

Demand: \$60,000

Cause: 28:1333 Admiralty

Plaintiff

Cantone & Co., Inc.

represented by Kevin John Lennon

Lennon, Murphy & Lennon, LLC

Nature of Suit: 120 Contract: Marine

Jurisdiction: Federal Question

The GrayBar Building 420 Lexington Avenue

Date Filed: 07/23/2007

Jury Demand: None

Suite 300

New York, NY 10170

(212) 490-6050 Fax: (212) 490-6070 Email: kjl@lenmur.com *LEAD ATTORNEY*

ATTORNEY TO BE NOTICED

V.

Defendant

Seafrigo

also known as Seafrigo Mareseille represented by Stephen H Vengrow

Cichanowicz, Callan, Keane, Vengrow & Textor

61 Broadway, Suite 3000 New York, NY 10006

212-344-7042

Fax: 212-344-7285

Email: svengrow@cckvt.com

ATTORNEY TO BE NOTICED

V.

Garnishee

Societe Generale New York Branch

represented by Richard Joseph Reisert

Clark, Atcheson & Reisert 7800 River Road North Bergen, NJ 07047 201-537-1200

Fax: 201-537-1201

Email: reisert@navlaw.com

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
07/23/2007	1	COMPLAINT against Seafrigo. (Filing Fee \$ 350.00, Receipt Number 621952)Document filed by Cantone & Co., Inc(mbe) (Entered: 07/25/2007)
07/23/2007		SUMMONS ISSUED as to Seafrigo. (mbe) (Entered: 07/25/2007)
07/23/2007		Magistrate Judge Debra C. Freeman is so designated. (mbe) (Entered: 07/25/2007)
07/23/2007		Case Designated ECF. (mbe) (Entered: 07/25/2007)
07/23/2007	2	RULE 7.1 CORPORATE DISCLOSURE STATEMENT. No Corporate Parent. Document filed by Cantone & Co., Inc(mbe) (Entered: 07/25/2007)
07/23/2007	8	EX PARTE ORDER FOR PROCESS OF MARITIME ATTACHMENT against all tangible or intangible property, credits, letter of credit, bills of lading effects, debts and monies, electronic funds transfers, freights, sub-freights, charter hire, sub charter hire or any other funds or property up to the amount of \$60,000.00, belonging to, due or being transferred to, from or for the benefit of the Defendant. (Signed by Judge George B. Daniels on 7/23/07) (djc) (Entered: 08/27/2007)
07/26/2007	<u>3</u>	AFFIDAVIT of Kevin J. Lennon in Support. Document filed by Cantone & Co., Inc (Lennon, Kevin) (Entered: 07/26/2007)

08/15/2007	4	NOTICE OF APPEARANCE by Richard Joseph Reisert on behalf of Societe Generale New York Branch (Reisert, Richard) (Entered: 08/15/2007)	
08/15/2007	<u>5</u>	ANSWER to Writ of Garnishment Report of Garnishee Societe Generale New York Branch to Plaintiff's Maritime Attachment. Document filed by Societe Generale New York Branch. (Reisert, Richard) (Entered: 08/15/2007)	
08/24/2007	<u>6</u>	RULE 7.1 CORPORATE DISCLOSURE STATEMENT. No Corporate Parent. Document filed by Seafrigo.(Vengrow, Stephen) (Entered: 08/24/2007)	
08/24/2007	7	ANSWER to Complaint. Document filed by Seafrigo.(Vengrow, Stephen) (Entered: 08/24/2007)	

PACER Service Center				
Transaction Receipt				
05/21/2008 15:54:12				
PACER Login:	cc0860	Client Code:	Optional for PACER use only	
Description:	Docket Report	Search Criteria:	1:07-cv-06602-PKL	
Billable Pages:	1	Cost:	0.08	

VENGROW EXHIBIT J

07-6602 (PFL)
Dashet no.

THE PRESIDENT OF THE UNITED STATES OF AMERICA

To the Marshal of the Southern District of New York (or designated process server) - GREETINGS:

WHEREAS a Verified Complaint has been filed in the United States District Court for the Southern District of New York on the 23rd day of July 2007 by

CANTONE & CO., INC.,

Plaintiff

neginbi

SHAFRIGO a/k/a SEAFRIGO MARSEILLE,

Defendant

in a certain scrion for breach of maritime contract wherein it is alleged that there is due and owing from the Defendant to the said Plaintiff the amount of \$60,000.00 and praying for process of maritime attachment and gamishment against the said Defendant,

WHEREAS, this process is issued pursuant to such prayer and requires that a garnishes(s) shall serve their answer(s), together with answers to any interrogatories served with the Complaint, within 20 days after service of process upon him and requires that Defendant shall serve its answer within 30 days after process has been executed, whether by attachment of property or service on the garnishes.

NOW, THEREFORE, we do hereby command you that if the said Defendant cannot be found within the District you attach goods and chattels to the amount sued for; and if such property cannot be found that you attach other property, credit and effects to the amount sued for in the hands of:

ABN Amro, American Express Bank, Bank of America, Bank of China, Bank of New York, Barclay's Bank, BNP Paulbas, Calyon, Chibank, Deutsche Bank, HSBC Bank USA Bank, J.P. Morgan Chase, Societe Generale, Sundard Chastered Bank, UBS, and/or Wachovia Bank N.A

to wit: property, letters of credit, deposits, funds, credits, bills of lading, debts, settlement agreements, or other assets, taugible or intangible, in whatever form of:

SEAFRIGO a/k/a SEAFRIGO MARSEILLE

and that you promptly after execution of this process, file the same in this court with your exturn thereon.

WITNESS, the Honorable Kimba M. Wood, Chief Judge of said Court, this _____ day of July 2007, and of our Independence the two-hundred and thirty-first.

Lennon, Murphy & Lennon, LLC
Attorneys for Plaintiff
The Gray But Building
420 Lenington Ave., Suite 300
New York, NY 10170
Phone (212) 490-6050

J. MICHAEL McMAHON
Clock

n.

Deputy Clerk

J. MICH EL MCMATO

NOTE: This Process is issued pursuant to Rule B(1) of the Supplemental Rules for Certain Admirally and Maritime Claims of the Federal Rules of Civil Procedure and or New York Civil Practice Law and Rules, Article 62.



VENGROW EXHIBIT K

Compagnie Financière du Crédit Mutuel

_Groupe Arkéa

Département des Activités Internationales International Department SWIFT: CMBRFR2B

December 26, 2007

Lennon, Murphy & Lennon, LLC The GrayBar Building 420 Lexington Avenue, Suite 300 New York, New York 10170

Attn.: Kevin J. Lennon, Esq.

RE: PAYMENT GUARANTEE NO. DOC-303456 FOR USD60,000.00
IN RESPECT OF SECURITY FOR CLAIM AGAINST MARITIME
ATTACHMENT AND GARNISHMENT OF SEAFRIGO "MARSEILLE"
MONIES LOCATED IN U.S. BANKS

Description of Claim: Claim for damages to cargo moving from Le Havre, France to Newark, New Jersey pursuant to the Seafrigo House Bill of Lading no. E350390000 dated September 22,2006 and which claim is sublect to the captioned complaint entitled <u>Cantone & Co., Inc. v. Seafrigo a/k/a Seafrigo Marseille</u>, Docket no.: 07 Civ 6602 filed in the U.S. District Court for the Southern District of New York: Amount of Guarantee: USD60,000.00 (U.S. DOLLARS SIXTY THOUSAND).

Whereas you have commended proceedings and obtained a Maritime Attachment and Garnishment pursuant to Rule B of the Supplemental Admiralty Rules of the Federal Rules of Civil Procedure in New York as security for the above claim: now in consideration of your releasing the said attachment as security for the above claim, we, COMPAGNIE FINANCIERE DU CREDIT MUTUEL, with head office 1 rue Louis Lichou 29480 Le Relecq-Kerhuon/Brest (France), hereby irrevocably undertake to pay you immediately upon receipt by us of an agreement of the parties providing for the payment of a compensation to CANTONE & CO. by SEAFRIGO or a definitive judicial decision condemning SEAFRIGO any sum not exceeding USD60,000.00 (U.S. DOLLARS SIXTY THOUSAND MAXIMUM) such sum, whether principal interests and costs due

It is hereby agreed that you may make more than one demand under this guarantee: save that the total of all sums demanded hereunder may not exceed the sum hereby guaranteed.

This guarantee shall be governed by New York Law and for the purpose of enforcing this guarantee:

1. We hereby submit to and consent to the jurisdiction of the U.S. District Court for the Southern District of New York.

LJ

🛕 Compagnie Financière du Crédit Mutuel______Groupe Arkéa

Département des Activités Internationales International Department SWIFT: CMBRFR2B

2. We hereby choose as an address for service:

Compagnie Financière du Crédit Mutuel International Département 1, rue Louis Lichou 29480 Le Relecq-Kerhuon/Brest (France)

Telephone: (33)2.98.00.24.39

Fax: (33)2.98.00.27.24

Mail: operations.documentaires@cmb.fr

This guarantee is initially valid for on year from the date of issue i.e. up to December 26, 2008 and shall be automatically renewed and shall remain valid until such time as it is returned for cancellation or until the above claim is either dismissed by judicial judgment or the claim has been settled or paid which ever is the earlier.

Yours faithfully,

COMPAGNIE FINANCIERE DU CREDIT MUTUEL INTERNATIONAL DEPARTMENT

Laurent LEVILLAIN
Authorized Signatory

<u>L'ucette JOLLY</u>

Authorized Signatory

Signed in Brest, on December 26, 2007

VENGROW EXHIBIT L

17 November 2006

M001/011

CANTONE & Co.

14 East 60th St., Suite 400 New York, NY 10022 212-826-2357 (fex) 212-826-1320

To:

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16.

Mr. Al Raffa

Seafrigo USA

Viennolserie Claim

Ref: Fax:

201-867-9320

Dear Al:

Please see enclosed copies of the following involces which are part of the total claim of this shipment. Please note that all products in this shipment were damaged, and at this point there is no complete understanding of where the damage happened. Therefore I have included all involces pertaining; which should all be part of the total claim.

BCS Invoice (enclosed) Euro 29,756.89	US\$37,791.25
Seafrigo Invoice #IMP04125605-1	\$ 6,754.18
Preferred Freezer	\$ 2,007.12
Preferred Freezer (spot check by Cantone)	\$ 202.50
Preferred Freezer (spot check by Cantone)	\$ 121.50
Preferred Freezer (spot check by Seafrigo) –	

note yet billed

Total of Claim

US\$46,876.55

If you need any further details please don't hesitate to contact myself or Reto.

Regards,

Sarah C. Nodjoumi

SEAFRIGO USA, INC.

55 CARTER DRIVE - SUITE 208 EDISON, NJ 08817 Phone: (201) 770-1143 Fax: (201) 867-9320 FMC LIC 3616



Bill To:

CANTONE & COMPANY, INC.

14 EAST 60TH STREET NEW YORK, NY 10022

INVOICE		
DATE	INVOICE#	
10/05/06	IMP04125605-0	

OUR REF#;

IMP04125605

YOUR REF#: EISU5648130

Description	Charges	
DUTY & TAXES		
ENTRY FEE	127.56	
PRE-CARRIAGE	160.00	
AMS FEE	1,404.00	
ISPS	19.50	
	19.50	
OCEAN FREIGHT	3,410.00	
BUNKER ADJ FACTOR	886.00	
B/L FEE	30,00	
INSURANCE		
CUSTOMS EXAM FEE	304.62	
	393.00	

VESSEL:

STADT WISMAR

SHIPPER:

BCS / BVF

CONSIGNEE:

CANTONE & COMPANY, INC.

MBL# / MAWB#:

HTML540600103855

HBL# / HAWB#:

E35039700000

NOTES:

CONT# EISU5648130

EXAM CHARGES ARE FOR XRAY

PERFORMED IN NY PORT

DUE -

TOTAL AMOUNT DUE

\$6,754.18

Notice is hereby constituted under the truth inlending act that any accounts remaining unpaid after 10 days from the indicated terms are subject to 1.5% per month interest and collection costs, including attorney fees.

VENGROW EXHIBIT M

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK	* **	
CANTONE & CO., INC.,	X :	07 CV (602 (PKL) (OCF)
Plaintiff,	:	ECF CASE
- against -	:	
SEAFRIGO a/k//a SEAFRIGO MARESEILLE,	:	
Defendant.	: :	
	A	

AFFIDAVIT IN SUPPORT OF PRAYER FOR MARITIME ATTACHMENT

State of Connecticut)	
)	ss: SOUTHPORT
County of Fairfield)	

Kevin J. Lennon, being duly sworn, deposes and says:

1. I am a member of the Bar of this Court and represent the Plaintiff herein. I am familiar with the facts of this case and make this Affidavit in support of Plaintiff's prayer for the issuance of a Writ of Maritime Attachment and Garnishment, pursuant to Rule B of the Supplemental Admiralty Rules of the Federal Rules of Civil Procedure.

DEFENDANT IS NOT PRESENT IN THIS DISTRICT

2. I have attempted to locate the Defendant, SEAFRIGO a/k//a SEAFRIGO MARESEILLE within this District. As part of my investigation to locate the Defendant within this District, I checked the telephone company information directory, as well as the white and yellow pages for New York listed on the Internet or World Wide Web, and did not find any listing for the Defendant. Finally, I checked the New York State Department of Corporations' online database which showed no listing or registration for the Defendant. The online database does, however, provide a listing for Seafrigo International Inc. However, although listed as a

New York corporation the listing provides that this entity only has a presence in Elizabeth, New Jersey and does not have a registered agent for service of process in the District. Further, although this company may be related to the Defendant, it is not the Defendant named in this action.

- 3. I did locate a website believed to be owned and operated by the Defendant hosted at www.seafrigo.com. A review of that website provides that Defendant does not have a presence in this District. Upon information, the Defendant has an affiliated company located in Secaucus, NJ named Seafrigo U.S.A. and although that company was involved – apparently as an agent on behalf of the Defendant – in the transaction discussed in the Plaintiff's Complaint, that entity is not a named Defendant herein.
- 4. I submit based on the foregoing that the Defendant cannot be found within this District within the meaning of Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claim.
- 5. Upon information and belief, the Defendant has, or will have during the pendency of this action, tangible and intangible property within this District and subject to the jurisdiction of this Court, held in the hands of in the hands of garnishees within this District, which are believed to be due and owing to the Defendant.
 - 6. This is Plaintiff's first request for this relief made to any Court.

PRAYER FOR RELIEF FOR ORDER ALLOWING SPECIAL PROCESS SERVER

7. Plaintiff seeks an Order pursuant to Rule 4(c) of the Federal Rules of Civil Procedure, for an Order appointing the undersigned, Patrick F. Lennon, Charles E. Murphy, Nancy Peterson or any other partner, associate, paralegal or agent of Lennon, Murphy & Lennon, LLC be and is hereby appointed, in addition to the United States Marshal, to serve the Process of Maritime Attachment and Garnishment and the Verified Complaint, together with any interrogatories, upon the garnishee(s), together with any other garnishee(s) who (based upon information developed subsequent hereto by the Plaintiff) may hold assets of, for or on account of, the Defendant.

- 8. Plaintiff seeks to serve the prayed for Process of Maritime Attachment and Garnishment with all deliberate speed so that it may be fully protected against the potential of being unable to satisfy a judgment ultimately obtained by Plaintiff and entered against the Defendant.
- 9. To the extent that this application for an Order appointing a special process server with respect to this attachment and garnishment does not involve a restraint of physical property, there is no need to require that the service be effected by the Marshal as it involves simple delivery of the Process of Maritime Attachment and Garnishment to the various garnishes to be identified in the writ.

PRAYER FOR RELIEF TO SERVE LATER IDENTIFIED GARNISHEES

10. Plaintiff also respectfully requests that the Court grant it leave to serve any additional garnishee(s) who may, upon information and belief obtained in the course of this litigation, to be holding, or believed to be holding, property of the Defendant, within this District. Obtaining leave of Court at this time to serve any later identified garnishees will allow for prompt service of the Process of Maritime Attachment and Garnishment without the need to present to the Court amended Process seeking simply to identify other garnishee(s).

PRAYER FOR RELIEF TO DEEM SERVICE CONTINUOUS

11. Further, in order to avoid the need to repetitively serve the garnishees/banks. Plaintiff respectfully seeks further leave of the Court, as set out in the accompanying Ex Parte Order for Process of Maritime Attachment, for any process that is served on a garnishee to be deemed effective and continuous service of process throughout any given day on which process is served through the next day, provided that process is served the next day, to authorize service of process via facsimile or e-mail following initial *in personam* service.

Dated:

July 23, 2007

Southport, CT

Keyin J. Lennon

Sworn and subscribed to before me this 23rd day of July, 2007.

Notary Public/Commissioner of Superior Court